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Reported by the Commission

FEDERAL COMMUNICATIONS COMMISSION

DEAN BURCH, Chairman

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F.C.C. 73-234

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF THE COMMISSION'S RULES AND REGULATIONS TO PROVIDE FOR THE LICENSING OF AUDITORY TRAINING DEVICES FOR THE PARTIALLY DEAF IN THE BANDS 72–73 AND 75.4–76 MHz.	Docket No. 19185 RM–1752

MEMORANDUM OPINION AND ORDER

(Adopted March 2, 1973; Released March 8, 1973)

BY THE COMMISSION: COMMISSIONER REID CONCURRING IN THE RESULT; COMMISSIONER WILEY NOT PARTICIPATING.

1. A Report and Order in this proceeding was adopted on July 6, 1972, and released on July 11, 1972, (35 FCC 2nd 677–691; 37 FR 13984). This report promulgated regulations for the operation of wireless auditory training systems (used for the education of deaf and partially deaf children) without individual license under Part 15 of the FCC Rules. The regulations listed 28 channels, each 50 kHz wide, in the bands 72–73 MHz and 75.4–76 MHz, with provision to operate wide band equipment (200 kHz wide) on certain of these channels. The regulations also set out technical specifications for the receiver portion and the transmitter portion of the auditory training system.

2. Three petitions for reconsideration of the Report and Order have been received. One petition filed on August 10, 1972, by HC Electronics, Inc. (hereafter HC), deals largely with the question of frequency and asks the Commission to reverse its original decision and to permit the use of higher power in the FM broadcast band, 88–108 MHz for wireless microphones which are used in wireless auditory training systems. In addition, HC requests that the technical standards adopted in our July 6, 1972 Order be relaxed. On February 7, 1973, HC submitted a supplement to its petition for reconsideration withdrawing its request for relation of certain of these standards. This request is discussed in paragraphs 20 to 26 below.

3. Electronic Futures, Inc. (hereinafter EFI), filed a petition for reconsideration on September 18, 1972. This petition addresses itself to two of the technical standards proposed: receiver image rejection and receiver selectivity and desensitization. EFI requests the Commission to reduce the requirement for each of these characteristics from 60 dB to 40 dB.

4. The Oticon Corporation, a Danish company that manufactures hearing aids and associated equipment which it markets in the USA through a US subsidiary, filed a petition on November 6, 1972, requesting the Commission to reduce the receiver image rejection and

109-031—73——1

receiver selectivity and desensitization from 60 dB to 40 dB. The petition also asks for a special regulation for receivers using so low an IF that the image frequency falls within the band of frequencies made available for auditory training devices. For such a receiver, Oticon requests that the image frequency suppression requirement be deleted and the permitted level of oscillator radiation from such receiver be increased.

5. In its petition, HC discusses a number of aspects of the Commission's Report and Order, but addresses itself basically to the relative merits of the 88–108 MHz band for auditory training systems. Primarily HC contends that inadequate consideration had been given to its argument in favor of higher power operation in the 88–108 MHz. Noting that the Commission had conceded the need for higher powered operation, HC reiterates its original argument that such higher power can be achieved in the FM broadcast band (88–108 MHz) without causing harmful interference to that service. HC bases this contention on the fact that no complaints of interference had been received, even with respect to those high power wireless microphones that had been authorized under waivers of § 15.212 granted during June–September 1971.[1]

THE USE OF THE FM BROADCASTING BAND (88–108 MHZ)

6. The FM broadcasting service in the band 88–108 MHz was established to provide a high quality aural broadcasting service. Wide channels (200 kHz) were provided to permit the transmission of high fidelity aural programs with negligible interference. In keeping with our policy of utilizing the radio spectrum in the most efficient manner, wireless microphones and telemetering devices were authorized to operate in the FM broadcast band but only under severe restrictions designed to insure that these devices could not cause interference to the FM broadcasting service. HC's request for higher power for its wireless microphone sought to ease these restrictions. The Commission did not find that HC's proposal was in the public interest, insofar as it sought higher power in the 88–108 MHz band.

7. We indicated in our Report of July 6, 1972, that we were persuaded by the arguments presented in HC's petition that higher power was required for wireless microphones used as auditory training devices. But we were not at all persuaded that such devices must operate in the 88–108 MHz band. The device described by HC can be developed and used successfully on almost any frequency in the VHF spectrum and even higher. (One need merely look at the variety of low power devices operating on the various land mobile frequencies, at the biomedical telemetry devices operating on frequencies between 100 and 200 MHz,[2] at radio controls for door openers between 220 and 400

[1] Section 15.212 provides that wireless microphones in the band 88–108 MHz shall operate with a maximum radiated field strength of 50 uV/m at 50 feet. Between June and September 1971, some 80 schools were authorized to operate the noncomplying HC wireless microphone model 221–T with a radiation level of some 3000–5000 uV/m at 50 feet. See #7 of the Report and Order in this proceeding. The schools given this authorization may continue to operate the noncomplying devices until January 1982, and may repair and replace units. (47 C.F.R. § 15.335(b).)

[2] In a rule making proceeding in Docket No. 19231, the Commission made available under Part 15, frequencies between 174 and 216 MHz for bio-medical telemetering devices operating with a field strength of 150 microvolts per meter at 100 feet.

MHz). Thus, the problem confronting the Commission in seeking to satisfy the need for higher power for the transmitter part of the auditory training system was where in the spectrum to locate these devices. In our study of this problem, we set ourselves the following objectives:

—To minimize the changes that a manufacturer would have to make in his existing designs.
—To minimize cost increases that might arise from a requirement that these devices operate in the higher reaches of the spectrum.
—To insure that devices furnished to schools could reasonably be expected to provide satisfactory service and have a minimum susceptibility to out of band (including adjacent channel) signals.

8. This study convinced us that to minimize redesign requirements the frequencies provided should be as close to 88–108 MHz as possible and should not be much above 300 MHz or much below 50 MHz. It was further decided not to increase the risk of interference to the FM broadcasting service by authorizing relatively high power operation in that band. (See discussion in Paragraphs 11 and 12 below). At the same time, by keeping wireless auditory training systems out of the FM band 88–108 MHz, we eliminate the possibility that these systems will be subject to destructive interference from on-channel (or adjacent channel) FM broadcasting stations. We concluded that the most reasonable available location in the spectrum for wireless auditory training systems was in the band 72–76 MHz. This band is currently used for a variety of low power operations (See paragraphs 37–38 of Report and Order) with a very low interference potential to wireless auditory training systems in schools and vice versa.

9. To minimize susceptibility to adjacent channel and other undesired signals, we imposed a requirement on the desensitization and adjacent channel selectivity characteristics and for image rejection of the receiver. We also imposed frequency stability requirements on the transmitter and receiver used in the auditory training system.

THE PROBLEM OF AVOIDING INTERFERENCE

10. HC bases its argument for higher power in the 88–108 MHz band on the fact that present operation of wireless microphones in this band, even with high power,[3] has not resulted in any complaints of interference. HC's position appears to be that the Commission should wait for interference to develop and then take corrective measures. The Commission has taken precisely the opposite position.

11. The Commission's responsibility is to anticipate interference and to promulgate rules to avoid its occurrence.[4] In line with this responsibility, we are in the process of tightening observance of technical standards by establishing more elaborate and more rigorous equipment authorization procedures.[5] We have already adopted mar-

[3] See note 1 *supra*.
[4] Congress appears to have the same preference for the preventive approach in this area of regulation. Public Law 90–379 (adopted July 5, 1968), which added § 302 to the Communications Act, was justified on the basis that it was more effective to prevent interference than to correct it.
[5] Docket No. 19356: In the matter of amendment of Parts 0 and 2 of the rules relating to equipment authorization of RF devices. Notice of Proposed Rule Making adopted November 24, 1971. (36 FR 23313.)

keting regulations [6] designed to keep interference-capable equipment out of the hands of the public.

12. HC points out also that not a single FM broadcaster had objected to its proposal to use higher power in the 88–108 MHz band; HC implies that, in the absence of such objection, the Commission should authorize higher power operation. But there was no reason for FM broadcasters to object in this rule making. The Notice proposed higher power operations only in the 72–76 MHz band—not in the FM band. The failure of FM licensees to object, then, does not indicate acquiescence in the HC proposal.

13. In looking at this situation, the Commission concluded that the growth in the use of auditory training systems in the 88–108 MHz band (which could be anticipated if high power auditory training systems were permitted in that band) together with the normal growth of the FM broadcasting service could be expected to produce an interference situation that would be difficult to correct. Accordingly, it was concluded that such high power operation by auditory training systems in the FM broadcasting band (88–108 MHz) was not in the public interest. In the absence of new information or more persuasive arguments, we reaffirm our original finding in this respect.

HC'S ARGUMENT AGAINST THE USE OF THE 72–76 MHZ BAND

14. HC also questions the usefulness of the 72–76 MHz band for auditory training systems, as compared to the band 88–108 MHz. This question is argued from two points of view—the availability of an adequate number of channels and the alleged interference to be expected from the operation of channel 4 and 5 television transmitters. HC takes the position that the spectrum space made available in this proceeding between 72–76 MHz does not provide a sufficient number of channels, and cites the NAE report [7] in this proceeding which calls for a minimum of 16 channels to be provided. HC contends that the frequencies made available between 72 and 76 MHz will provide only eight channels (each 200 kHz wide). This contention is based on HC's claim that each channel must be 200 kHz wide, based on its allegations that an audio bandwidth out to 15,000 cycles is required. This allegation is not supported, however, either by the NAE or the HEW [8] reports. NAE in its report states that an audio bandwidth of 100–8000 Hz is required. HEW in its report, sets the required audio bandwidth at 100–7000 Hz.

15. We are persuaded to accept the judgment of the experts consulted by HEW and NAE. Accordingly, we reiterate our finding that a 50 kHz channel is adequate. Such a channel is easily capable of delivering a 8000 Hz audio signal with an adequate signal to noise ratio. The spectrum space we have provided, permitting 28 channels, each 50 kHz wide, thus more than meets the minimum requirement set out in the NAE report.

16. The second aspect—that of potential interference from channel 4

[6] Part 2, Subpart I (47 CFR 2.801 *et seq*).

[7] Report filed September 2, 1971, by National Engineering Academy, Subcommittee on Sensory Aids as a comment in Docket No. 19185.

[8] Report filed on December 20, 1971, by the Department of Health, Education, and Welfare, National Advisory Committee on Education of the Deaf as a comment in Docket No. 19185.

and channel 5 television transmitters—is discussed in some detail in paragraph 38 of the July 6, 1972 Report and Order. We recognized there that the potential for interference existed, but we concluded that satisfactory service could be obtained even under the worst interference conditions. We need not reiterate that discussion. We can add, however, that many of the existing operations in the band 72–76 MHz are low power mobile operations. The communications provided by these operations have been satisfactory despite the existence of high power TV transmitters on adjacent channels. On the basis of information now available to the Commission, we cannot accept HC's contention that channels 4 and 5 will produce destructive interference to auditory training systems in this band.

17. HC asserts further that the potential for interference to television reception from auditory training systems is substantial in the band. It calls attention to the Commission's pending Notice of Inquiry regarding interference to reception of TV channel 6 from noncommercial education FM stations in the band 88–92 MHz. These situations are not analogous, however. In the case of FM/TV–6 interference, we are concerned with a blanketing effect produced by an FM station operating with 10 watts or more. In the present rule making, we are dealing with auditory training system transmitters operating with a power output of the order of 20–100 milliwatts whose blanketing area is negligible when compared with that of a 10 watt transmitter. HC also calls attention to the special restrictions imposed by § 91.8(g) against operational fixed stations operating in the band 72–76 MHz. These restrictions apply to operational fixed stations operating with hundreds of watts. The restrictions imposed against these stations are designed to avoid the creation of an area in which television reception is destroyed. At the same time, we can point to the many low power operations in the band 72–76 MHz which are not subject to the restriction as to geographic location imposed by § 91.8(g).

TECHNICAL STANDARDS FOR THE TRANSMITTER

18. Of the three parties who filed for reconsideration in this proceeding,[9] only HC questioned the frequency stability for the transmitter part of the auditory training system as set out in § 15.353.[10] HC states that such a requirement is unnecessary for low power equipment. It particularly objects to the requirement that frequency stability be demonstrated over the large temperature range specified. However, HC does not indicate how much this frequency tolerance should be relaxed, or what in its opinion would constitute a suitable requirement. HC merely refers, in this connection, to the requirements in § 91.555 [11] apparently suggesting that similar requirements should be applied to the transmitter part of the auditory training system.

[9] See paragraph 2, 3, and 4 of this Order.

[10] Section 15.353 provides that the transmitter part of the auditory training system shall maintain a frequency stability of +0.005% over a temperature range of 0° to 50°C and a supply voltage range of 85% to 115% of the normal supply voltage.

[11] Section 91.555 provides that a transmitter operating in the Business Radio Service with a power input that does not exceed 200 milliwatts is exempt from the general technical requirements applicable to that service provided the sum of the bandwidth occupied by the emitted signal plus the bandwidth required for frequency tolerance is confined

19. The purpose of this requirement in § 15.353 was to insure that each transmitter in the auditory training system would stay within its own channel and would not intrude into the adjacent channels. Such a requirement is essential if an adequate number of channels is to be available for auditory training systems. It is significant that no other manufacturer of such systems has questioned this requirement.[12] We remain convinced that the transmitter frequency stability requirement is a necessary element in the new auditory training systems rules. It is reaffirmed.

TECHNICAL STANDARDS FOR THE RECEIVER

20. All three petitioners for reconsideration challenge the technical standards for the receiver. EFI argues that the 60 dB requirement for adjacent channel selectivity and desensitization [13] and the 60 dB image rejection requirement [14] are excessively severe for receivers to be worn by children in auditory training systems. In support of its argument it presents extensive data showing the specifications claimed by manufacturers of a variety of receivers now on the market. In citizens band equipment, the best advertised specifications are respectively 45 dB and 42 dB. In pocket paging receivers, 60 dB is achieved but only in equipment which is designed for one frequency operation and whose front end can therefore be carefully packaged. This, EFI states, is not true for auditory training receivers, which have to be designed for multiple channel operation. EFI also presents data for conventional FM receivers which achieve 70 dB alternate channel selectivity and 90 dB image rejection, and points out that, despite the unlimited size permitted, no manufacturer offers receivers capable of adjacent channel operation.

21. EFI contends that requirements of 60 dB are not necessary for auditory training receivers and asserts that a standard of 40 dB is adequate to protect adjacent channel operation under the conditions that normally prevail in the classroom. This opinion is supported by statements from Mr. Chapin C. Cutler,[15] Bell Telephone Labs and Dr. Peter Kindleman,[16] Yale University.

22. The Oticon Corporation also contends that the 60 dB specification is excessive and will increase excessively the cost of the auditory training receiver. Oticon agrees that a specification of 40 dB for adjacent channel selectivity and image rejection is adequate.

23. Oticon proposes a different approach to the problem of image frequency. It suggests that the IF be sufficiently low so that the image frequency falls within the bands allocated. Oticon argues that this ap-

within a band 80 kHz wide centered on the assigned frequency with emissions outside this 80 kHz band attenuated at least 30 dB. Such transmitters must be typed accepted (§ 91.109(b)). To receive type acceptance, data must be submitted showing that the transmitter meets the above requirement over a temperature range of −30° to +50°C and a supply voltage variation of 85% to 115% of normal supply voltage.

[12] As a practical matter two transmitters for use in auditory training systems in the 72–76 MHz band have already been type approved under these standards. These are listed in FCC Bulletin OCE 32.

[13] Section 15.363 specifies that the receiver shall provide 60 dB adjacent channel selectivity and desensitization.

[14] Section 15.365 specifies that the receiver shall provide 60 dB image frequency rejection.

[15] Exhibit D to EFI petition for reconsideration. Mr. Cutler is Director of Electronic and Computer Systems Research Laboratory at Bell Telephone Laboratories, Holmdel, N.J.

[16] Exhibit E to EFI petition for reconsideration. Dr. Kindlman is Director of the Engineering and Applied Sciences Electronic Laboratory of the Durham Laboratory at Yale University, New Haven, Conn.

proach will obsolete the image frequency rejection requirement since no disturbance (interference) from other services will be possible. Moreover, Oticon points out that this approach will permit each receiver to be served by two transmitters, although it does not elaborate on this theme and explain how this arrangement would benefit the auditory training system. Oticon does point up one apparent defect in using a low IF which brings the local oscillator frequency close to the signal frequency. In such an arrangement, the front end circuitry is no longer available to suppress oscillator energy from reaching the antenna and being radiated. Being close to the desired signal frequency, the front end circuits will readily pass and not discriminate against the local oscillator energy. It would, therefore, be necessary to raise the permitted level of oscillator radiation for a receiver using such a low IF.

24. HC asserts that the requirement for frequency stability of the receiver [17] is unrealistic, is unnecessary, and that no similar requirement is found elsewhere in the Commission's rules.[18]

25. The Commission has reviewed the several arguments against our present technical standards for the auditory training receiver. We are persuaded that we can reduce our requirement for adjacent channel selectivity and desensitization and for image frequency rejection from 60 dB to 40 dB without seriously compromising the desired performance of these receivers. We are amending our rules accordingly. While we see some merit in Oticon's proposal to use a low IF, we do not see how these benefits overcome the undesirable side result of increased oscillator radiation. Accordingly, we cannot agree to Oticon's second request for an increase in oscillator radiation. This does not mean that we will object to the use of a low IF. On the contrary, Oticon is free to use any IF it finds desirable and convenient, provided, that its receivers meet our 40 dB requirement for image frequency rejection and our requirements for oscillator radiation.

26. We cannot agree with HC that our proposal for frequency stability is unrealistic. As to HC's argument that such receiver standards are not found elsewhere in the Commission's rules, we can point out that our frequency allocations and our channeling arrangements in all services have always taken into account the performance of the receiver to be used.[19] These standards were always discussed in the order making the change in the allocations or in the channeling arrangement, but it is true that they were never specifically stated in our regulations. In the past several years we have been importuned to set our these receiver specifications in the rules. Actually, this is the second proceeding in

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[17] Section 15.361 specifies that the receiver frequency stability shall be ±0.005% over the temperature range 0°–50°C and a supply voltage variation of 85% to 115%.

[18] In its petition for reconsideration filed August 10, 1972, HC had, in addition requested reconsideration of the requirement imposed by §§ 15.363 and 15.365, claiming that the 60 dB requirement for image rejection and for adjacent channel selectivity and sensitivity, were also unrealistic. The request for reconsideration of the requirements in §§ 15.363 and 15.365 was withdrawn by HC's supplement filed February 7, 1973, on the grounds that it had determined that these standards are attainable in circuitry manufactured on an assembly line. HC points out in this connection that its recently certificated receiver model 421–R which operates in the band 88–108 MHz and is not required to comply with §§ 15.363 and 15.365, does in fact meet the 60 dB standard imposed by these regulations.

[19] An outstanding example is the frequency assignment plan for the UHF television channels which is based on a number of taboos to account for the performance of UHF television receivers.

which receiver specifications have been set out in our rules.[20] It is our intention to do so in all future proceedings which involve changes in channeling designed to take account of improved receiver characteristics. We reaffirm the receiver frequency stability requirements.

MEASUREMENT PROCEDURE

27. The question of measurement procedure to be used in measuring the radiated field from the transmitter part of an auditory training system was not raised in the petitions for reconsideration. Since we have experienced enforcement problems due to difference in measurement procedures,[21] we are taking this opportunity to clarify the procedures. The clarification requires the addition of a new Section 15.377 to Subpart G of Part 15, but it does not change the substantive restrictions on field strength.

28. Measurement of the radiated field from the transmitter part of the auditory training system when worn on the body or held in the hand is not satisfactory since the results vary according to how the device is worn or carried. To yield more consistent results, a standard procedure has been developed in which the device is measured in a test set-up—a wooden support in an open field.[22] Using such a test set-up presents a problem since our experience derived during measurements for type approval show that radiation in a test set up is not the same as when the device is worn on the body or carried in the hand. The difference in any one case is unpredictable. On the average, however, there is some reduction. The practical effect is that a device designed to meet the required field strength limit under standard test conditions, on the average, may operate below the allowable limit in normal use. Thus, on the average, the standard test procedure may impose a stricter limit on the device than the Commission has intended.

29. With a view toward retaining the standard test procedure and, at the same time, insuring that it does not impose a stricter limit than the regulations intended, the test procedure heretofore used is being revised to incorporate a factor to take into account the average difference between radiation under standard test conditions and that in normal use. The factor to be used is 4 dB and deflects the experience of our Laboratory in making these measurements. The revised Bulletin incorporating this correction factor is expected to be issued in March 1973.

CONCLUSION

30. As explained above, we do not find it in the public interest to permit the high power sought by petitioner in the band 88–108 MHz—

[20] See § 83.715 of the rules adopted for Bridge-to-Bridge communications in the Maritime Mobile Service. Docket No. 19343, adopted May 24, 1972 (37 FR 11245).

[21] This question was raised in connection with two petitions filed on September 22, 1972, by HC Electronics, Inc., asking the Commission to take remedial action against EFI for marketing wireless microphones that allegedly were in violation of the Commission's Rules. The Commission's investigation of HC's allegations revealed that some of these devices were tested for type approval under a procedure different from the published statement of the measurement procedure. The Commission dismissed HC's petitions on January 23, 1973, after obtaining commitments from EFI to bring its microphones into compliance. *Memorandum Opinion and Order*, 39 F.C.C. 2d ——. In a footnote to the dismissal order, the Commission said that it would address this question in connection with petitions for reconsideration of the auditory training systems rules.

[22] Bulletin OCE 19, published in January 1969, sets forth the test procedure that has been employed by the Commission's Laboratory Division. The Division also has taken measurements under conditions of normal use.

the FM broadcasting band, and we reaffirm our earlier determination that such high power operation shall be permitted in the band 72–76 MHz. We reaffirm also our earlier determination to divide the frequency space in the 72–76 MHz band into channels 50 kHz wide, with provision for using 200 kHz channels in special circumstances. We are persuaded by the arguments presented and have relaxed our technical specifications for receivers from 60 dB to 40 dB for adjacent channel selectivity and desensitization and for image frequency rejection requirements. We deny the requests for relaxation of other receiver specifications and of the transmitter specification. Finally, we clarify the measurement procedure for determining compliance with field strength limits.

31. Accordingly, IT IS ORDERED, effective April 16, 1973, that Part 15 is amended as set out in the Appendix to this Order. Authority for these amendments is contained in §§ 4(i), 302, 303(c), (g) and (r) of the Communications Act of 1934, as amended. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Part 15 of the Commissions Rules is amended as follows:

1. Section 15.363 is amended to read as follows:

"§ 15.363 Receiver selectivity and desensitization (72–76 MHz)

A receiver operating as part of an auditory training system in the band 72–76 MHz shall provide a minimum of 40 dB adjacent channel selectivity and desensitization when measured in accordance with the procedure specified in EIA Standard RC–204 dated January 1958, or equivalent procedure. (See IEEE Standard 184. April 1969)."

2. Section 15.365 and headnote are amended to read as follows:

"§ 15.365 Receiver image frequency rejection (72–76 MHz)

A receiver operating as part of an auditory training system in the band 72–76 MHz shall provide a minimum of 40 dB image frequency rejection when measured in accordance with the procedure specified in EIA Standard RS–204 dated January 1958, or equivalent procedure. (See IEEE Standard 184, April, 1969)."

3. A new Section 15.377 is added to read as follows:

"§ 15.377 Measurement of Field Strength

Measurement of radiated field strength of all emissions (fundamental, harmonics and other spurious) from the transmitter parts of auditory training systems, operating in the 72–76 MHz band or in the 88–108 MHz band, shall be made in accordance with the procedure set forth in FCC Bulletin OCE 19, published March 1973."

F.C.C. 73-231

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
MIKE BRAMBLE, DUBUQUE, IOWA
Concerning Station KBUN

MARCH 2, 1973.

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

Mr. MIKE BRAMBLE, *593 Arlington, Dubuque, Iowa.*

DEAR MR. BRAMBLE: This is in reference to your letter, dated October 24, 1972, to the Minnesota Human Rights Department, a copy of which you sent to Commissioner Nicholas Johnson.

In your letter you alleged, among other things, that the manager of station KBUN forbade you to broadcast news items offensive to station advertisers because the manager feared withdrawal of advertising accounts and that as a result of one newscast and complaints of advertisers your employment at station KBUN was terminated.

As you know, the Commission has made an investigation of your allegations.

The licensee is responsible for his programming and therefore has not only the right but the obligation to acquaint himself with what is being or will be presented; the licensee may not, however, use his facilities to promote his private rather than the public interest, and refusal to broadcast material—which otherwise would be broadcast—because of pressure from an advertiser is an obvious example of subordinating public to private interest.

On the basis of the Commission's investigation of this case, however, it cannot be determined that the licensee did subordinate public to private interest, or that your employment was terminated because you broadcast a news item critical of a local advertiser rather than because you refused to follow station policy, left the station without notice or explanation, and thereafter refused to discuss the matter with the manager of the station.

Commissioner Johnson dissenting.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-247

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request of CITIZENS COMMUNICATION CENTER For Extension of Time To File Petition To Deny Renewal of License for Station WRAG, Carrollton, Ala., on Behalf of Pickens County NAACP	BR-2646

MARCH 2, 1973.

ALBERT H. KRAMER, Esq.,
Citizens Communications Center,
1812 N Street,
Washington, D.C.

DEAR MR. KRAMER: This is in reference to your letter of February 26, 1973, on behalf of the Pickens County Chapter of the National Association for the Advancement of Colored People, whereby you request an extension of time to March 12, 1973, to file a petition to deny the application for renewal of license for Radio Station WRAG, Carrollton, Alabama (BR-2646). Pickens County Broadcasting Co., Inc., licensee of WRAG, has not objected to this request.

Section 1.580(i) of the Commission's Rules and Regulations provides, in substance, that a petition to deny a renewal application must be filed on or before the first day of the last full month of the station's license term. The license for WRAG expires on April 1, 1973. Accordingly, a timely petition to deny was due on March 1, 1973. Absent good cause shown, the Commission will not grant a waiver of Section 1.580(i) to authorize the filing of a petition after that date. See, e.g., *WSM, Incorporated*, 24 FCC 2d 561 (1970), and *Trumball County N.A.A.C.P.*, 25 FCC 2d 827 (1970).

In support of your request for an extension of time you state that the N.A.A.C.P., having already monitored the station and transcribed the results of the monitoring, sent Rev. James H. Corder, President of the group, to the WRAG offices on February 22 and 23, 1973, to inspect a copy of the aforementioned renewal application; that, in violation of Section 1.526 of the rules, the application was not available for inspection on either occasion; and that on Sunday, February 25, the general manager of the station arranged to meet with Rev. Corder on February 26 (the date of the instant request), but that it was not clear whether the application would be available for inspection at that time. As a result of the station's failure to make the application available, you state that the N.A.A.C.P. could not possibly meet the March 1 filing deadline, and that, since counsel had allotted certain days for work on the preparation of the WRAG petition, other com-

mitments would prevent counsel from affording adequate legal assistance unless an extension is granted.

In view of the foregoing, we believe that you have demonstrated good cause for waiver of Section 1.580(i) of our rules. Accordingly, the time for filing a petition to deny by the Pickens County Chapter of the N.A.A.C.P. against WRAG, Carrollton, Alabama, is extended to March 12, 1973.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73-236

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Objections by CITIZENS FOR PROGRESSIVE RADIO IN BAY COUNTY TO ASSIGNMENT OF LICENSE OF STATION WMAI-FM, PANAMA CITY, FLA.	BALH-1734

MARCH 2, 1973.

MR. RAY MCCAY, JR.,
Chairman, Citizens for Progressive Radio in Bay County, Post Office Box 7133, Laguna Beach Station, Panama City, Fla.

DEAR MR. MCCAY: This refers to the application for assignment of the license of Station WMAI-FM, Panama City, Florida from Mus-Air, Inc., to Bay County Broadcasting Company, Inc. (BALH-1734). This also refers to the informal objections filed on October 24, 1972 by the Citizens for Progressive Radio in Bay County (hereinafter, "Citizens"), objecting to a proposed change in format.

WMAI-FM presently broadcasts a progressive rock format. In view of continuing financial losses incurred under this format, and in view further of availability of Top-40 Rock formats over two other Panama City area stations, Bay County Broadcasting has determined that the public interest would best be served by changing the station's format. Citizen's contentions are: (a) that the format change is not responsive to needs and interests in Panama City (principally, interests of the area youth) and music broadcast by other area stations will not fill the void resulting from the format change, and (b) community interests and needs were not accurately determined by assignee's survey.

The Commission noted that on November 7, 1972, shortly after your objections were filed, assignee substantially amended its format proposals. The amendment resulted from listener preference surveys conducted by assignee in the Bay County area, which surveys covered (a) members of the general listening public, and (b) members of the area student population. In view of the sustained student interest in progressive rock disclosed by surveys of the student group, and in an effort to achieve a compromise format, assignee has determined a five-hour segment of progressive rock (from 9 p.m. to 2 a.m., daily) will be retained by WMAI-FM. Thus, over 20% of the broadcast day will be devoted to progressive rock.

The Commission further noted that on November 24, 1972, Bay County Broadcasting responded to your objections. That reesponse (which was served on you) outlined the November 7th format amendment and set forth the reasons why Bay County believed the Citizens objections were without merit. Since filing of assignee's program

format amendment and response, there has been no further objection or reply from Citizens.

The Commission has repeatedly held that decisions respecting proposed formats are left to the good faith judgment of the applicants, and where—as here—a station has sustained continuing losses under a particular format and other area stations will continue to provide a similar format to listeners, the Commission has declined to interfere with a proposed assignee's judgment that a format change would be in the public interest. See *WTOS–FM, Inc.*, 21 RR 2d 146 and *Twin States Broadcasting, Inc.*, 24 RR 2d 767.

On the basis of all the information before it, including your informal objection, the Commission determined that a grant of the application would serve the public interest; and on March 2, 1973, it granted the application.

In view of these considerations, the informal objections of Citizens for Progressive Radio in Bay County were dismissed.

Commissioner Johnson dissenting.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73-266

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re complaint of
CLUB PALMACH RIFLE AND PISTOL CLUB, INC.
against
NATIONAL BROADCASTING CO.
and
COLUMBIA BROADCASTING CO.

ORDER

(Adopted March 7, 1973; Released March 12, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has before it an Application for Review filed on February 8, 1973 by Club Palmach Rifle and Pistol Club, Inc., of the ruling of the Broadcast Bureau of January 15, 1973.

2. We have examined the pleadings herein and believe that the Bureau's ruling was correct. Accordingly, pursuant to Section 1.115(g) of the Commission's Rules and Regulations, the Application for Review IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-250

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF SECTION 0.311 OF THE COMMISSION'S RULES RELATING TO AUTHORITY DELEGATED TO CHIEF, FIELD ENGINEERING BUREAU

ORDER

(Adopted March 7, 1973; Released March 12, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. Alien pilots and flight crewmembers continuously seek waivers of the citizenship requirements of Section 303(1) of the Communications Act and the geographic restriction requirements of Section 13.4(c) of the Rules in order to obtain restricted radiotelephone operator permits. Pursuant to Section 13.11(c) such applications must be signed by individual applicants.

2. Foreign airlines have recently begun to submit applications on behalf of their pilots for whom waiver of the Rules are sought and restricted permits requested. In each instance the appropriate form and fee is submitted for each individual named and an assurance made that the named permittee will sign the permit individually immediately upon receipt. The permit in any event is not valid until so signed.

3. The Chief and Deputy Chief, Field Engineering Bureau, are delegated the authority to grant the waiver requests of Section 303(1) of the Act and Section 13.4(c) of the Rules, pursuant to Section 0.311 (a) (9) and (11) of the Rules.

4. The Commission believes that an extension of this delegated authority to permit the granting of waiver of the individual applicant's signature requirement of Section 13.11(c) by the Chief and Deputy Chief, Field Engineering Bureau, would support the handling of the existing delegation and assist in the orderly and expeditious handling of the Commission business.

5. This amendment relates to the internal Commission organization, and hence, the prior notice, procedure, and effective date provisions of the Administrative Procedure Act are not applicable. Authority for the promulgation of these amendments is contained in Section 4(i) and 5(b) and (d) of the Communications Act of 1934, as amended.

6. Accordingly, IT IS ORDERED, effective March 21, 1973, that § 0.311(a) of the Rules IS AMENDED by deleting subparagraph (10) (presently Reserved) and substituting the following new § 0.311 (a) (10):

§ *0.311 Authority delegated to the Chief and to the Deputy Chief of the Field Engineering Bureau*

(a) * * *

(10) To act on requests for waiver of the individual signature requirement in § 13.11(c) of this chapter on applications for commercial operator permits and licenses.

* * * * * * *

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

39 F.C.C. 2d

109-031—73——2

F.C.C. 73-229

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
KENNETH M. COOPER, DRIGGS, IDAHO
For Review Concerning Complaint Re
Station KID, Idaho Falls, Idaho

MARCH 2, 1973.

AIR MAIL
MR. KENNETH M. COOPER,
Box 111,
Driggs, Idaho

DEAR MR. COOPER: This refers to your Application for Review of what you term a "letter action" of the Broadcast Bureau regarding your complaint against Station KID, Idaho Falls, Idaho.[1]

In your complaint and subsequent pleadings you assert in substance that: (1) KID and CBS, whose newscasts it carries, have presented copious news, discussion and commentary on the United States involvement in Indochina, including interviews with "numerous Senators, Representatives, cabinet members and other public figures domestic and foreign regarding their views on our activity in Indochina"; (2) although KID has carried detailed information on a daily basis regarding the American involvement in Vietnam, it has failed to give you full news reports on what you call "the other side of the Indochina conflict," and in order for you to function as an informed citizen, you request that the Commission direct the licensee to "give me a full report on this *other side* . . . bringing me up-to-date on the Russian and Chinese participation, their motives and goals, covering all of the angles that you [KID] do with regard to American involvement; what they supply and how, the cost of the war to a Russian or Chinese family, how aware people are in this countries of their war participation, what effect the war has had on their domestic economy and politics, what share is paid by the people of Poland, Czechoslovakia and other Communist countries and all other facts of their support of the North Vietnamese"; (3) KID also must "provide me with a historical report in the course of the next several months that will bring me up to a current basis" on the matters detailed above; (4) your complaint is in no way based upon alleged violation of the fairness doctrine, as the staff construed it to be in responding to your second letter; (5) you do not allege slanting or distortion of news and do not question the "licensee's motive or bona fides"; (6) although KID forwarded a

[1] The pleadings in this case are as follows: Letter of complaint to the Commission dated February 12, 1972, enclosing a prior letter of complaint to KID; staff response sent to complainant February 18, 1972; second letter from complainant dated August 4, 1972; staff response thereto dated August 21, 1972; Application for Review of staff "letter action" filed September 12, 1972; Opposition to Application for Review filed by KID October 4, 1972; Reply to Opposition filed by complainant October 11, 1972.

copy of your original letter to CBS, since CBS news programs were named therein, and you have sent CBS a copy of your Application for Review, you have received no response from CBS.

You also assert that "the propriety and indeed the necessity of honoring" your request "were essentially ruled on in advance by the Supreme Court in the *Red Lion* case" (*Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367). In support of your contentions you also cite, *inter alia*, *Banzhaf v. FCC*, 405 F 2d 1082; *Brandywine-Main Line Radio, Inc.*, 24 FCC 2d 18; *Friends of the Earth*, 24 FCC 2d 743, and *Committee for Fair Broadcasting*, 25 FCC 2d, 283.

In its Opposition to Application for Review the licensee states that it has dealt more fully with all relevant aspects of the Vietnam war than any other station in its city; that news programming is a matter of licensee responsibility and discretion; that you concede that you are not raising a fairness doctrine matter; that, rather, "applicant is substituting his judgment on the content of KID news programming for that of the licensee" and requesting the Commission to "undertake to superimpose its new judgment over that of the licensee' by making a judgment "as to what was presented as against what should have been presented," and that the Commission has stated that this is "a judgmental area for broadcasting journalism which the Commission must eschew," citing *Hunger in America*, 20 FCC 2d, 143 (1969).

The petitioner here expressly disclaims any allegation of violation of the fairness doctrine or "slanting or distortion" of news. Stripped of its verbiage then, petitioner's request is that the Commission direct a licensee to present the particular news which petitioner asserts he wants to hear on a particular station.

This we decline to do for reasons previously set forth in related areas. See, for example, *Letter to ABC, et al.*, 16 FCC 2d 650 (1969); *Hunger in America, supra; Letter to Mrs. J. R. Paul*, 26 FCC 2d 591 (1969). The complaints against the networks in *Letter to ABC* were in part similar to petitioner's here, e.g., that the networks had presented one kind of news in covering the 1968 Democratic National Convention and had failed to present other kinds which complainants believed should have been presented. As we stated in that case at p. 654,

> The general rule is that we do not sit to review the broadcaster's news judgment, the quality of his news and public affairs reporting, or his taste. The exceptions involve the "fairness," "equal opportunity," and "personal attack" doctrines—designed not to affect what is presented, or to stifle the presentation of views, but rather to encourage a full, free and fair discussion. We have also investigated allegations such as willful distortion or the self-serving use of the airwaves to promote the licensee's private interests.

We stated further, pp. 655–56:

> However, the Commission has never examined news coverage as a censor might to determine whether it is fair in presenting the "truth" of an event as the Commission might see it. The question whether a news medium has been fair in covering a news event would turn on an evaluation of such matters as what occurred, what facts did the news medium have in its possession, what other facts should it reasonably have obtained, what did it actually report, etc. For example, on the issue whether the networks "fairly" depicted the demonstrators' provocation which led to the police reaction, the Commission would be required to seek to ascertain first the "truth" of the situation—what actually occurred; next what

facts and film footage the networks possessed on the matter; what other facts and film footage they "fairly" and reasonably should have obtained . . . .

However appropriate such inquiries might be for critics or students of the mass media, they are not appropriate for this Government licensing agency . . . .

Aside from unusual situations of the kinds cited herein, it is not the proper concern of this Commission why a licensee presented a particular film segment or failed to present some other segment. Such choices are not reviewable by this agency.

Accordingly, in light of the facts before us we shall not treat further such complaints as that the networks switched away from the podium to an undue extent or that they sought to "spread rumors" regarding a Kennedy draft. These are matters for the journalistic judgment of the networks . . . Similarly, we do not consider further whether the presentation of the demonstrations broadcast was unfair, in the sense of considering which portions of the film were shown and which were not . . .

Petitioner has sought to evade the clear import of our prior rulings by claiming that his plea is based on "the public's right to adequate news coverage." The Commission indeed considers news coverage and discussion of public issues as among the most important elements of a licensee's obligation to serve the public interest. Petitioner concedes that Station KID has given extensive coverage to the Indochina war and in a manner consistent with the fairness doctrine, yet demands that the Commission substitute its news judgment for that of the licensee and the network whose programs constitute a part of its broadcasts, by requiring that some additional particular news information be presented concerning the war.

Were the Commission to adopt the position here urged upon it, it would upon complaint be compelled to review the coverage by more than 8,000 broadcasting stations of every news event cited by complainants; to determine whether the coverage of the event accorded with the notions of each complainant, and, if not, whether the licensee was "at fault." Such an approach, cut loose as it is from the fairness doctrine, has no permissible standard under either the Constitution or the Communications Act. Any attempt to evaluate such complaints as to "what should have been broadcast" as against, or in addition to, what had been broadcast would place this agency in the role of national arbiter of the news; in fact, dictator of which news items should be broadcast. Since there are only so many hours in the broadcast day and most listeners seem to desire other programming in addition to news (e.g., music, drama), it obviously is impossible for each licensee to present as much news about every event as every member of the public might desire. Thus, licensees and networks must exercise their journalistic judgment on what news is of greatest significance and interest to the public generally. With the exception of certain limited circumstances not here involved, the Commission will not intervene in any manner in the selection and presentation of broadcast news. For this, the Government licensing agency, to do so would be inconsistent with the provisions of the First Amendment.

Finally, we note that the approach suggested here has no logical stopping point and would appear to permit a complainant to require that not only his desire for particular news but his particular aesthetic needs, as well, be served (e.g., by presenting certain musical selections, dramas or ballets).

We have considered petitioner's citations of alleged precedent for his plea and we have found none of the cases apposite to his contentions.

Accordingly, the petitioner's requested relief is DENIED.

Commissioner Johnson concurring in the result.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73-278

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENTS OF PARTS 1, 2, AND 87 OF THE RULES TO PROVIDE FOR THE LICENSING AND USE OF EMERGENCY LOCATOR TRANSMITTERS (ELT's)	Docket No. 19385

REPORT AND ORDER

(Adopted March 7, 1973; Released March 13, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. On January 7, 1972, we released a Notice of Proposed Rule Making in this Docket. The Notice was published in the Federal Register on January 13, 1972 (37 FR 537). The Notice provided for the filing of comments and reply comments by specified times that have now passed.

2. For reasons described in detail in the Notice, we proposed to amend Parts 1, 2 and 87 of our rules essentially and briefly as follows:

a. to provide for licensing, testing and operation of an emergency locator transmitter (ELT) and to specify frequencies that may be assigned for ELT purposes; and

b. to include certain technical specifications for ELTs in the rules.

3. Eleven comments were received in response to the Notice of Proposed Rule Making. No reply comments were received. Listed below are the commentors, and a summary of their comments.

a. Aircraft Owners and Pilots Association, Washington, D.C., an association with 162,000 members: supports the proposed rule changes and asserts it "will enhance safety".

b. National Pilots Association, Washington, D.C., "fully agrees" with the proposed rule changes.

c. Dillingham Corporation-Marine Services (Dillingham), Honolulu, Hawaii, operator of vessels, primarily tugs and barges; states, in the interests of safety at sea, it is in favor of the proposed changes but suggests, for numerous detailed reasons, the changes be extended to include maritime services.

d. Marine Technology Division of Dayton Aircraft, Inc. (Mar Tech), Fort Lauderdale, Florida; asserts, for detailed technical reasons, that the reduced power output specified when testing an ELT with an internal test circuit cannot be met and suggests that field strength measurement in the test position be eliminated from the proposed specifications. Mar Tech states, that it conducted tests with various models of ELTs "utilizing an RF test and generating 75 mw on both frequencies with the antenna removed and the final RF amplifier output fed directly into a test light, one meter from the transmitter . . ." Under those conditions, Mar Tech reports that a radiated voltage was generated that ranged from 1,500 micro v/m on 121.5 MHz and 6,000 micro v/m on 243 MHz in the case of a small, personal, portable beacon, to 5,500 micro v/m on 121.5 MHz and 29,000 micro v/m on 243 MHz in the case of a large survival type beacon. Mar Tech also asks for authority to operate ELTs with an A3 (voice) emission.

e. Robert S. Barnes, Ann Arbor, Michigan, Civil Air Patrol Commander: supports the proposed rule changes and states that failure to adopt the changes would

have an adverse affect on search and rescue operations by removing certain aircraft from the limited types of aircraft that are available for such operations.

f. J. DeBlick, Midland, Michigan: recommends adoption of the proposed rule changes and believes a filing fee for an ELT "would be an unnecessary tax on safety".

g. Anthony M. Wojcicki, D.M.D., M.Sc.D., Nashua, New Hampshire: is an aircraft owner and supports the rule change that would eliminate a license filing fee and the operator permit requirement in case of ELT operations.

h. The Aerospace and Flight Test Radio Cooperation Council (AFTRCC): strongly supports the proposed rule changes except, for detailed reasons, believes the two frequencies proposed for use when testing ELTs will be inadequate and recommends instead that all the remaining aeronautical "utility ground control" frequencies (121.7, 121.75, 121.8, 121.85 and 121.9 MHz) also be made available for ELT testing and training. AFTRCC points out that there are too many locations where both the 121.6 and 121.65 MHz frequencies will be in simultaneous use and more flexibility is needed in order to select one of the several utility station frequencies that is relatively little used; AFTRCC believes that some provision should be made for operational testing of an ELT on the frequency 121.5 MHz since there will be many instances when FAA coordination is not practicable.

i. Experimental Aircraft Association, Hales Corners, Wisconsin: supports the proposed elimination of the license filing fee and operator permit requirements for use of an ELT.

j. Donald A. Warfle, Xenia, Ohio: supports the proposed elimination of the license filing fee and operator permit requirements for use of an ELT.

k. California Department of Aeronautics (CDA): supports the elimination of filing fee and operator permit requirements for ELTs and does not object to the use of 121.6 and 121.65 MHz for development tests and training, but asserts that the operation of ELTs on 243 MHz should be expressly authorized and authority to test ELTs not equipped with internal test circuits, on 121.5 MHz, for brief "confidence checks" should be provided, and objects to use of A3 (voice) emissions on ELTs because of resultant rapid power depletion.

In addition to the foregoing comments from the public, we have been requested by the Federal Aviation Administration (FAA) to include in any new rules adopted a provision that would permit brief operation for testing an ELT on the emergency frequency 121.5 MHz under controlled conditions. The FAA has also advised us that it concurs in the AFTRCC recommendation that all frequencies used by aeronautical utility stations be made available for assignment to ELT testing stations without interference to voice communications on those frequencies, and under FAA coordination.

4. With respect to the Dillingham comment that provisions, comparable to those proposed in this proceeding for aviation, should be included in the Commission's Rules for operation of locator devices in the maritime services, we agree and a study on that subject is now nearing completion. If a notice of proposed rule making is released that proposes the operation of locator devices in the maritime services, Dillingham's comments filed in this docket will be considered in that proceeding, without prejudice to its right to file additional comments as provided in any forthcoming notice of proposed rule making on the subject.

5. Concerning the Mar Tech assertion that the specified reduced power for testing an ELT with an internal test circuit cannot be met, we do not agree. We do not consider that the tests conducted by Mar Tech resolve this question because the tests were not conducted under the conditions specified in our proposed rule making; i.e. with the transmitter output switched to an internal test circuit (dummy load). We believe, however, that to specify a fixed limit on radiation level at this time may be unrealistic and undesirable in view of the various

sizes and characteristics of ELT chassis and case configurations which ordinarily could be expected to technically influence the radiation emitted from an ELT. We are, therefore, amending the rule by omitting the proposed 15 microvolts per meter and providing in lieu thereof that radiation must be reduced to the minimum practicable level. If this test procedure for ELTs with internal test circuits proves to be inadequate and causes interference to other stations or creates false distress situations, we will consider further rule changes to cope with that matter. The Mar Tech request that provision for operation of an ELT with a 6A3 (voice) emission is not considered desirable and will not be adopted. It has long been our policy to not authorize the use of single channel transmitters in the aviation service. A single channel aircraft transmitter would most likely be equipped with the emergency frequency 121.5 MHz and we believe there would be a tendency for a pilot to use that frequency for routine operational voice communications, to the degradation of the frequency for emergency communications. It is out deliberate intention in this rulemaking proceeding not to depart substantively from this long standing policy. As stated in our notice of proposed rule making, we proposed here, in the interests of safety and to aid in implementing new legislation requiring, in some aircraft, the locator beacons, to permit the licensing of a single channel transmitter designated an ELT, but only when it is operated with an A9 (and not a voice) emission. If a licensee desires to operate on the emergency frequency 121.5 MHz with an A3 (voice) emission, there is already adequate provisions in the rules to permit him to do so under the conditions specified in our rules. In such a case, however, an operator permit and an application filing fee are required.

6. We agree with the AFTRCC recommendation for the reasons furnished that all utility station frequencies be made available for assignment to test ELTs at the design and maintenance stages and we are expanding Section 87.521(e) of the rules to include all these frequencies. No reply comments were received objecting to this recommendation and the FAA which primarily uses these frequencies in its aerodrome control activities, or is involved in the use of the frequencies by our licensees who operate aerodrome control stations, concurs in making all seven of the frequencies available for ELT test and training purposes, provided that coordination is established in each instance with the appropriate FAA Regional Frequency Management Office. Additionally, the matter has been reviewed by the Interdepartment Radio Advisory Committee which interposed no objections to this use of all the utility frequencies.

7. We also agree with the FAA, CDA and AFTRCC, for the reasons they provide, that provision should be made for brief operational tests of ELTs on 121.5 MHz and we are modifying the rule to so provide.

8. In our definitions for ELTs in Parts 1 and 87 of the rules we will delete the word "ship" from that part of the definitions that describes an ELT as ". . . part of an aircraft, ship, or survival craft station . . .". At the time we released the ELT NPRM, we had under study a similar rulemaking proceeding for Part 83 (Stations on Shipboard in the Maritime Services) and we contemplated that the same definition would be suitable in both services for a piece of equipment that is essentially identical, except that in the maritime community it is

generally identified as an EPIRB (emergency position indicating radio beacon). We intended, if possible, to avoid the confusion that could result from having two names and definitions in our rules for essentially the identical piece of equipment. It appears, however, that the maritime community may desire a slightly different definition for a similar transmitter when it is operated in the maritime services. We will, therefore, in this proceeding, orient our definition of an ELT toward operation in the aviation services, with the possibility that we may yet, in the Part 83 proceeding, arrive at a single definition that is acceptable to both the aviation and maritime communities. Additionally, in this proceeding, we are amending Section 87.183(1) to permit the use of an ELT on 243 MHz with the new A9 emission specified in the new rule Section 87.67.

9. In view of the foregoing, IT IS ORDERED, That pursuant to the authority contained in Sections 4(i), 303(r), and 318 of the Communications Act of 1934 as amended, Parts 1, 2 and 87 of the Commission's rules, ARE AMENDED, effective April 23, 1973, as set forth in the attached appendix.

10. IT IS FURTHER ORDERED, That, the proceeding in this Docket IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

I. Part 1 of the rules is amended as follows:

Section 1.1115(c) of the rules is amended by adding a new subparagraph (9) as follows:

§ *1.1115 Schedule of fees for the Safety and Special Radio Services.*

* * * * * * * * *

(c) * * *

* * * * * * * * *

(9) Applications for license for an aircraft station to operate with only an emergency locator transmitter.

II. Part 2 of the rules is amended as follows:

1. In Section 2.1 new definitions, Emergency locator transmitter and Emergency locator transmitter test station are added in alphabetical order as follows:

§ *2.1 Definitions.*

* * * * * * * * *

Emergency locator transmitter. A transmitter intended to be manually or automatically activated and operated automatically as part of an aircraft or survival craft station with an A9 emission as a locating aid for survival purposes.

Emergency locator transmitter test station. A land station, operated with an A9 emission on the frequencies used for testing emergency locator transmitters, for testing equipment intended to be used as emergency locator transmitters, or for training in the use of emergency locator transmitters.

* * * * * * * * *

2. In Section 2.106, columns 10 and 11 for the frequency bands 117.975–132 MHz are amended by adding the following:

§ *2.106 Table of Frequency Allocation.*

* * *	* * *	* * *
Band (MHz)	Frequency (MHz)	Nature {OF SERVICES of stations
1	10	11
* * *	* * *	* * *
117.975–132	121.6–121.9 (NG 34)	* * *
		Aeronautical utility land; aeronautical utility mobile; and emergency locator transmitter test.
* * *	* * *	* * *

III. Part 87 of the rules is amended as follows:

1. In Section 87.5 of the rules new definitions, Emergency locator transmitter and Emergency locator transmitter test station are added, in alphabetical order, to read as follows:

§ 87.5 *Definition of terms.*

* * * * * * *

Emergency locator transmitter. A transmitter intended to be actuated manually or automatically and operated automatically as part of an aircraft or a survival craft station, with an A9 emission, as a locating aid for survival purposes.

Emergency locator transmitter test station. A land station, operated with an A9 emission on the frequencies used for testing emergency locator transmitters, for testing equipment intended to be used as emergency locator transmitters, or for training in the use of emergency locator transmitters.

* * * * * * *

2. A footnote 6 indicator is added to the emission 13A9 in the emission designator column in Section 87.67(b)(1) of the rules, and a new 3.2A9 emission with footnote 7, and a new footnote 7, is added as follows:

§ 87.67 *Types of emission.*

Class of emission	Emission designator	Authorized bandwidth: Below 50 MHz (kilohertz)	Authorized bandwidth: Above 50 MHz (kilohertz)	Frequency deviation (kilohertz)
* * *	* * *	* * *	* * *	* * *
A3J [2]	3A3J [2]	4.0		
A9	13A9 [6]		[6] 25	
A9	3.2A9 [7]		[7] 25	
F1	1.7F1	1.7		
* * *	* * *	* * *	* * *	* * *

* * * * * * *

[7] Applicable only to emergency locator transmitters, and emergency locator transmitter test stations, employing modulation in accordance with that specified in Section 87.73(h) of the rules. The specified bandwidth and modulation requirements shall apply to emergency locator transmitters for which type acceptance is granted after April 23, 1973; to all such transmitters first installed after October 21, 1973; and to all such transmitters after December 30, 1976.

3. A new paragraph (h) is added in Section 87.73 of the rules as follows:

§ 87.73 *Modulation requirements.*

* * * * * * *

(h) Emergency locator transmitters, and emergency locator transmitter test stations shall employ amplitude modulation of the carrier

with an audio frequency sweeping downward over a range of not less than 700 Hz, within the range 1600 to 300 Hz, with a sweep rate between 2 and 4 times per second. The modulation applied to the carrier shall be in accordance with that specified in the Radio Technical Commission for Aeronautics (RTCA) Document Numbers DO–145 or DO–146. (Available from Radio Technical Commission for Aeronautics, Room 655, 1717 H Street NW., Washington, D.C. 20006.)

4. Section 87.93 is amended to read as follows:

§ *87.93 Routine Tests.*

(a) The licensees of all classes of stations in the aviation services are authorized to make such routine tests, other than emergency locator transmitter tests, as may be required for the proper maintenance of the stations provided that adequate precautions are taken to insure that there is no interference with the communications of any other station.

(b) An emergency locator transmitter (ELT) may be tested only under the conditions set forth below.

(1) An ELT fitted with an internal test circuit having a manually activated test switch and an output indicator may be tested provided that the switch, in the test position:

(i) permits the operator to determine that the unit is operative;

(ii) switches the transmitter output to a test circuit (dummy load), the impedance of which is equivalent to that of the antenna affixed to the ELT; and

(iii) reduces radiation to the minimum level that is technically feasible.

(2) An ELT not fitted with an internal test circuit may be tested in coordination with, or under the control of, a Federal Aviation Administration representative to insure that testing is conducted under electronic shielding, or other conditions, sufficient to insure that no transmission of radiated energy occurs that could be received by a radio station and result in a false distress signal. If testing with FAA involvement as described above is not practicable or feasible, brief operational tests are authorized provided the tests are conducted within the first five minutes of any hour, are not longer than three audio sweeps, and, if the antenna is removable, a dummy load is substituted during the test.

5. Section 87.139(a)(2) of the rules is amended as follows:

§ *87.139 Operator licenses not required for certain operations.*

(a) * * *

(2) Operation of an aircraft station using only an emergency locator transmitter, or a survival craft station while it is being used solely for survival purposes, or for testing of such stations.

* * * * * * *

6. In Section 87.183, the introduction text in paragraph (f), and paragraph (1) are amended to read as follows:

§ *87.183 Frequencies available.*

* * * * * * *

(f) 121.5 Megahertz: This is a universal simplex clear channel frequency for use by aircraft in distress or condition of emergency. Except for transmissions of signals by an aircraft station operated with only an emergency locator transmitter using an A9 emission, it will not be assigned to aircraft unless other frequencies are assigned and available for normal communications. The channel is available, as follows:

* * * * * * *

(1) 243 MHz: This is an emergency and distress frequency available for use by survival craft stations, emergency locator transmitters and equipment used for survival purposes which are also equipped to transmit on the frequency 121.5 MHz. Use of 243 MHz shall be limited to transmission of signals and communications for

survival purposes. Types A2, A3 or A9 emissions may be employed, except in the case of emergency locator transmitters where only A9 is permitted.

* * * * * * *

7. The title of Subpart P of Part 87 of the rules is changed to read as follows:

SUBPART P—LAND TEST STATIONS.

8. In Section 87.521 a new paragraph (e) is added as follows:

§ 87.521 *Frequencies available.*

* * * * * * *

(e) The frequencies 121.6, 121.65, 121.7, 121.75, 121.8, 121.85 and 121.9 MHz may be assigned to emergency locator transmitter test stations on the condition that (1) no harmful interference is caused to voice communications on these frequencies, and (2) coordination is established with the appropriate FAA Regional Frequency Management Office prior to activating the transmitter. Authority to operate on these frequencies does not include authority to operate on any harmonically related frequency; i.e. 243.2 MHz, etc.

9. In Section 87.523 the existing paragraph is designated paragraph (a) and a new paragraph (b) is added as follows:

§ 87.523 *Scope of service.*

(a) Transmissions by radionavigation land test stations shall be limited to the necessities of the testing and calibration of aircraft navigational aids and associated equipment when such testing must be performed by means of radio transmissions.

(b) Transmission by emergency locator transmitter test stations shall be limited to the necessities of testing emergency locator transmitters and to training operations in connection with the use of such transmitters.

10. In Section 87.525 the existing paragraph is designated paragraph (a) and a new paragraph (b) is added as follows:

§ 87.525 *Eligibility.*

(a) Authorizations for radionavigation land test stations (MTF) will be granted only to applicants engaged in the development, manufacture or maintenance of aircraft radionavigation equipment. Authorizations for radionavigation land test stations (OTF) will be granted only to an applicant who agrees to establish the facility at an airport for the use of the public.

(b) Authorizations for emergency locator transmitter test stations will be granted only to persons having a need for training personnel in the operation and location of emergency locator transmitters, or for testing in connection with the manufacture or design of emergency locator transmitters.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ACCURACY IN MEDIA, INC., WASHINGTON, D.C.
Concerning Fairness Doctrine Re NBC

FEBRUARY 27, 1973.

ACCURACY IN MEDIA INC.,
1232 Pennsylvania Building,
425 13th Street NW.,
Washington, D.C.

GENTLEMEN: This will refer to your letter of complaint, dated January 29, 1973, concerning an NBC documentary on San Francisco's Chinatown which was broadcast January 2, 1973.

In particular, you state that the documentary presented "a view of Chinatown as seen through the eyes of two young Chinese, both of whom were extremely critical of conditions in this important ethnic community." You list the following statements as having been made in the program: Chinatown is a "crummy place"; "The community lacks cats because they are eaten by the starving people"; Chinatown is "a 'kennel' maintained by white racism," "a depressing ghetto," "a trap from which the elderly cannot escape"; "Housing is probably the worst in San Francisco . . . the elderly living in tiny cubicles"; Chinatown "has the highest population density in the country save Harlem" and "the highest TB rate in the country," and "the government likes to keep it (that way)"; "There is no such thing as a strong Chinese family in Chinatown"; "The modern American image of the Chinese-Americans is typified by the songs and movies of the 1930's"; and "The best bookstore in the community is one that specializes in communist literature and posters."

You state that "these and other views on the program are one-sided and give the audience a distorted picture of this important ethnic community. A blanket condemnation of an ethnic community of several thousand people is automatically controversial and is certainly of public importance. The community has a right to be presented to the nation in a balanced light, not through the eyes of its most radical critics only." You further state that the program "failed to meet the requirements of the fairness doctrine" and that "no balancing material . . . has been aired." You therefore request the Commission to "find NBC and its affiliated stations in violation of the fairness doctrine," and to instruct them "to provide their audience with programming that will give a truer and more balanced picture of Chinatown."

As you know, the starting point in determining whether the fairness doctrine is applicable to particular programming and whether reasonable opportunity has been afforded for the presentation of contrasting views is an adequately precise specification of the controversial issue of

public importance involved, together with support for the claim that the program substantially addressed that particular issue. Thus, the Commission has refused to treat isolated remarks as being of sufficient import to trigger fairness doctrine obligations, *National Broadcasting Company* (AOPA complaint), 25 F.C.C. 2d 735 (1970), and has put upon complainants the burden of defining the issue and furnishing the basis for their view that it was discussed to a cognizable degree. Your instant complaint does not provide sufficient information in these respects to warrant further consideration of the question of whether NBC has complied with fairness with respect to the program in question. For while you have cited a number of remarks allegedly made in the program which clearly indicate the speakers' belief that living conditions in Chinatown are not adequate, there is no indication in your letter that this view presents a controversial issue of public importance, either nationally or in the San Francisco area.[1] Moreover, your characterization of the issue, while not entirely clear, appears to be quite different, i.e., that there has been a "condemnation" of the Chinese ethnic community. This, of course, means condemnation of a group of people. However, your letter contains no information to indicate that the program in question attacked the qualities of the Chinese people in San Francisco, which would be quite a different matter from deploring the conditions in which they are required to live. The former issue, as you urge, may well be "automatically" controversial and of public importance; the latter one is not.

Further consideration of your complaint would therefore require a clearer specification of the issue you believe to be involved, together with some additional information demonstrating that the issue is controversial and of public importance, either nationally or in the local area of any station which broadcast the program, that the program contained a substantial discussion of the issue, and that NBC has not afforded a reasonable opportunity for the presentation of contrasting viewpoints (which, as you know, need not necessarily be on the same program).

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

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[1] Here you should note that, as explained to you in prior letters and rulings, the mere allegation that certain remarks or statements are inaccurate or present a "one-sided" or "distorted" view of their subject and that the "truth" or "the other side" has not been presented will not provide a sufficient basis for a fairness complaint absent a showing that such remarks or statements were substantially addressed to a specified controversial issue of public importance.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
F. G. FULLER, JR., ORLANDO, FLA.
Concerning Fairness Doctrine Re Station
WKIS

FEBRUARY 9, 1973.

Mr. F. G. FULLER, JR.,
1792 Hiawassee Road,
Orlando, Fla.

DEAR MR. FULLER: This is in response to your letter of complaint, dated January 4, 1973, against Standard Broadcast Station WKIS, Orlando, Florida, concerning certain news commentary which it has presented on the issue of the location of a state half-way rehabilitation center. In particular, you state that on November 15, 1972, the station broadcast a commentary criticizing the people of Pine Hills and the Pine Hills Community Council for their opposition to the location of a criminal rehabilitation center in their area. You state that this matter presents a controversial issue of public importance in the station's service area as evidenced by public hearings and extensive local media coverage. You further state that you phoned the General Manager of Station WKIS requesting time to present a view opposed to the station's commentary but were refused for the reason that "The station manager felt the coverage afforded by station WKIS covered the situation adequately." In this regard, you contend that since the commentary was sharply critical of those opposing location of the rehabilitation facility in your community, it "could not be balanced by the heretofore factual coverage of the daily activities of the people and the council."

As explained in our previous letter to you of December 29, 1972, where complaint is made to the Commission under the fairness doctrine, the Commission expects a complainant to specify, *inter alia*, the basis for his claim that the station has broadcast only one side of the particular issue involved and has failed to afford reasonable opportunity for the presentation of contrasting views on that issue in its overall programming. Although you state that the commentary in question presented a view sharply critical of opposition to the location of a rehabilitation center in your community and "could not be balanced by the heretofore factual coverage of the daily activities of the people and council," you have not provided the Commission with any factual basis for that conclusion. You should understand that the fairness doctrine requires only that a station presenting one side of a controversial issue of public importance afford a reasonable opportunity for the presentation of contrasting views in its *overall* programming on that issue. In this regard, it is within the good faith discretion of the licensee to make and implement reasonable judgments as to what

viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all other facets of such programming. Thus, the fairness doctrine does not require a station to balance editorial with editorial or viewpoint with viewpoint according to any precise mechanical formula. Compliance with the fairness doctrine can be achieved through news coverage in which contrasting views or positions are presented in the context of reporting governmental proceedings, group actions, and other similar news events. Further consideration of your complaint would therefore depend upon a more detailed and specific statement of facts which would support your conclusion that the station's overall programming on the issue involved has not afforded reasonable opportunity for the expression of views opposed to the position taken in its commentary.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
LEO MAES, MAYOR, CITY COUNCIL, WALSENBURG, COLO.
Concerning Fairness Doctrine
Re Station KFLJ

FEBRUARY 21, 1973.

Hon. LEO MAES,
Mayor, City Council,
Walsenburg, Colo.

DEAR MAYOR MAES: This refers to the complaint filed by you and members of the Walsenburg City Council against station KFLJ in Walsenburg, Colorado. We regret that we are only now able to respond to your last letter but, because the staff was for many months swamped with complaints and inquiries related to the 1972 primaries, conventions and general elections, which would have become moot unless they were resolved at once, it was necessary to postpone further consideration of some complaints.

In a letter dated May 10, 1972 you and Council members stated that Mr. Floyd Jeter is the owner, operator, chief broadcaster and news commentator of KFLJ; that "he has a history of using his microphone to inflict his private opinions" on the community; that he charges the public $1.80 per minute for the opportunity to air dissenting viewpoints; that Mr. Jeter's comments and editorializing do not carry any mention of "paid political announcement"; that he is extremely biased; that he blatantly makes false statements; that he has become the leader in a movement to recall the present Walsenburg City Council; that this stems from a personal grievance of Mr. Jeter's against the council concerning his refusal to abide by the building permit code of the city; and that in regard to this recall movement, Mr. Jeter has aired falsehoods about the council. Accompanying your letter of complaint you enclosed a tape recording as an example of Mr. Jeter's "daily tirade urging citizens to vote to recall the council." You stated that among the false allegations contained in this broadcast were statements that the previous city budget was thrown out by the present council, and that the Parts and Upkeep fund was close to being depleted. You requested an investigation of station KLFJ and its use of the "public airways for private vindictiveness."

In response to a Commission inquiry regarding these allegations, the licensee stated in a letter dated June 20 that you were offered time to reply to Mr. Jeter's remarks but that you declined the use of the time; that Councilwoman Anna Mae Nunnelee asked if the air time could be used to tell of the city council's accomplishments; that Mr. Jeter

109-031—73——3

replied with an offer of "ten minutes of air time during the 12:30 programming or a longer period in a time slot with less commercials." KFLJ also contends that neither you nor any member of the council has ever approached the station for free or commercial time to discuss council business or opinions, but that nevertheless it extended an offer to you to record and air excerpts of the city council meetings.

After receiving a copy of the station's response, in a letter dated June 26 you stated that Mr. Jeter did offer time to you to reply to the statements he made and you refused this offer because "it would not serve any useful purpose since answer to the statements would lead to another statement." You further stated that KFLJ had been receiving $25 monthly for airing city council meeting minutes until this payment was discontinued by the council; that during the last days of January 1972, a KFLJ employee called you to make a tape stating that it had to be ready by February 1; that you were unable to comply and that the offer was made apparently to fufill the obligation of the station which resulted from the $25 paid KFLJ by the council in January 1972; that the station had used words such as "pocketing money" and "criminal charges" in regard to the city council; and that the controversy between Mr. Jeter and the city council was political in nature due to the fact that Mr. Jeter initiated the circulation of recall petitions against seven city councilmen. You requested time to reply to Mr. Jeter whenever he uses KFLJ to encourage citizens to recall the council.

In response to an additional Commission inquiry, in a letter dated October 4, 1972 KFLJ stated that it never had a policy under which the public was charged $1.80 per minute for the opportunity to air dissenting viewpoints; that the city council has been provided with copies of editorials with which members might not agree; and that on such occasions offers of time have been extended to you and the council.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material.

However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented, and if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith.

Mr. Jeter contends that he has offered you time to respond to his remarks about the council. You agree, but state that you refused his offer because you felt that any response on your part would promote more comment by Mr. Jeter. However, even if this were the case, it would not necessarily constitute a violation of the fairness doctrine, since one of the major purposes of the fairness doctrine is to promote robust, wide-open debate with, of course, reasonable opportunities being provided for contrasting views. Mr. Jeter also maintains that the council has been provided with copies of the editorials with which members might not agree, and that he has extended an offer to you to broadcast responses to them, statements with which you do not take issue. Thus, on the basis of the information before the Commission, it cannot be said that KFLJ has failed to afford a reasonable opportunity for the presentation of contrasting views on the issues pertaining to the city council.

The licensee denies having a policy under which viewpoints are broadcast only when payment is made. In absence of evidence to the contrary, no finding can be made at this time that the licensee has such a policy.

You also state that the phrases "pocketing money," and "criminal charges" were used by Mr. Jeter in connection with the council. A personal attack for the purposes of the Commission's Rules is an attack upon the honesty, character, integrity, or like personal qualities of an identified person or group.

When a personal attack is alleged, the Commission expects a complainant to submit specific information indicating, *inter alia*, the words or statements broadcast; the date and time the broadcast was made; the basis for the claim that the words broadcast constitute an attack upon the honesty, character, integrity or like personal qualities of an identified person or group; the basis for the claim that a personal attack was broadcast during the presentation of views on a controversial issue of public importance; the basis for the claim that that which was discussed was a controversial issue of public importance, either nationally or in the station's local area, at the time of the broadcast; and whether the station within one week of the alleged attack: (i) notified the person or group attacked of the broadcast; (ii) transmitted a script, tape, or accurate summary of the broadcast if a script or tape is not available; and (iii) offered a reasonable opportunity to respond over the station's facilities. Should you provide such information, this aspect of your complaint will be given further consideration.

You also allege that Mr. Jeter has failed to tag his comments and editorials as "paid political announcements." Neither the Communications Act nor the Commission's Rules require a broadcast licensee to label commentary or editorials as paid political broadcasts. Sponsorship identification must be broadcast, however, if payment is received by the station or commentator for the broadcast of any matter, but it does not appear that you have alleged such payment to Mr. Jeter or the station.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by

writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES AND KENNETH T. LYONS
Concerning Fairness Doctrine Re Station
WFAI, Fayetteville, N.C.

FEBRUARY 22, 1973.

BEASLEY BROADCASTING CO.,
Licensee of Radio Station WFAI,
Box 649,
Fayetteville, N.C.

GENTLEMEN: This is in further reference to the November 16, 1972 complaint filed by the National Association of Government Employees (NAGE) and Mr. Kenneth T. Lyons, against radio station WFAI, Fayetteville, North Carolina. The complaint concerned certain announcements broadcast by you on behalf of the American Federation of Government Employees (AFGE), in connection with a November 1, 1972 union representation at Fort Bragg, North Carolina.

As you will note by the enclosed letter to NAGE, the Bureau stated that it could not find that you acted unreasonably in determining that the union representation election was not a controversial issue of public importance in the station's listening area.

The complaint states that Mr. Harry Breen, a national Vice-President of NAGE, heard the AFGE ads broadcast on the night of October 31, 1972, and immediately called the station explaining the urgency of the situation and requested an opportunity to respond before the election the following day. You denied his request for an opportunity to respond and stated that the station had a "policy not to accept advertising after the close of business hours." In regard to this action the complainants stated that "(I)f the station manager did not understand the importance of an opportunity for reply before November 1, the only possible reasons for that lack of understanding were the station's refusal to allow Mr. Breen to talk to the manager and the failure of the employee in charge to transmit Mr. Breen's message to him. And of course proper station procedure would have disclosed the problem before the advertisements were broadcast, since the station would have contacted NAGE during business hours on October 31, before the ads were aired."

You stated that on November 1, 1972, after conferring with your attorney, a letter was sent to NAGE and Mr. Kenneth T. Lyons offering them an opportunity to respond to the AFGE advertisements. It therefore appears that at the time Mr. Breen was advised that the station had a "policy not to accept advertising after the close of business

hours," you had made no determination on the merits of Mr. Breen's request, including such matters as to whether a controversial issue was involved and whether, in view of the time element, denial of Mr. Breen's request would render moot whatever remedy he might have. We believe that your actions on October 31 were inconsistent with a licensee's obligations concerning the handling of controversial issues of public importance, particularly when time is of the essence.

Rather than rejecting a request on the basis of some general policy which apparently was adopted with other situations in mind, the licensee should have considered Mr. Breen's request on its merits and in light of the time element involved. Accordingly, you are requested to inform the Commission in writing, within ten days of the date of this letter, how you intend to deal with similar situations in the future, i.e., those which may involve controversial issues and/or personal attacks and where time is of the essence.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
NATIONAL AUDUBON SOCIETY, OWENSBORO, KY.
Concerning Fairness Doctrine Re Stations WSAZ–TV, Huntington, W. Va., and WAVE–TV, Louisville, Ky.

FEBRUARY 16, 1973.

MR. JOHN L. FRANSON,
National Audubon Society,
1020 East 20th Street,
Owensboro, Ky.

DEAR MR. FRANSON: This letter will refer to your January 30, 1973 complaint against WSAZ–TV, Huntington, West Virginia and WAVE–TV, Louisville, Kentucky.

You state that on December 29, 1972, on behalf of the National Audubon Society, you wrote WSAZ Television and WAVE–TV requesting equal time to present your organization's views on the issue of strip mining. You further state that WSAZ Television broadcast two 30 minute programs purchased by the Kentucky Surface Mining and Reclamation Association, a strip mining concern, as contrasted with only one 30 minute program presented by the Appalachia Defense Fund, which is opposed to strip mining; that WAVE–TV had also broadcast a greater number of programs and spots by pro-strip mining organizations than by organizations who are opposed to strip mining; and that WSAZ and WAVE denied your December 29, 1972 requests for equal time.

In a January 9, 1973 response to your December 29, request, WSAZ Television stated that its 1972 records showed that 3 hours and 12 minutes were devoted to anti-strip mining views; that 3 hours and four minutes were devoted to views favoring strip mining; and that one hour and two minutes had been devoted to views which the station classified as neutral. The station concluded by stating it felt that the issue had been fairly discussed and that no additional coverage of the matter was warranted.

WAVE–TV responded to your December 29, 1972 letter on January 9, 1973, stating that it had run programs and spots covering both sides of the environmental aspects of strip mining, and that it recognized the continuing effect strip mining has on the Kentucky environment and intended to keep the viewers informed on the subject. Although it did not state that the National Audubon programs would be broadcast, it did request "prints" of these broadcasts in the event such material was needed in the future.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material.

However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith. For your further information, we are enclosing a copy of the Commission's Public Notice of July 1, 1964, entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance."

From the responses of the licensees, which you have submitted, it appears that WSAZ has afforded reasonable opportunity for the presentation of contrasting views during 1972, and that WAVE–TV has presented contrasting views in its overall programming and intends to continue its coverage of the issue. Under these circumstances, it does not appear that any action by the Commission is warranted at this time. Should you have specific information that any licensee in its overall programming has failed to comply with the fairness doctrine, please let us know and we will give this matter further consideration. (See page 10416 of the enclosed Public Notice regarding the filing of fairness doctrine complaints.)

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
RICHARD WOLF, NEW YORK, N.Y.
Concerning Fairness Doctrine Re Station
WPIX, New York, N.Y.

FEBRUARY 16, 1973.

MR. RICHARD WOLF,
102 Earl Hall,
Columbia University,
New York, N.Y.

DEAR MR. WOLF: This letter will refer to your May 2, 1972 complaint against Television Station WPIX, New York, New York, in which you allege a fairness doctrine violation. As stated in our letter to you of January 30, 1973, we regret that we are only now able to respond to your complaint because of the Commission workload related to the 1972 primaries, conventions and general elections. Ordinarily your complaint would have been answered sooner. You state that "Senator Buckley Reports", a monthly series broadcast by the station, dealt with one side of the controversy surrounding the desirability of the United States Information Agency's operations (hereinafter U.S.I.A.) as then conducted; that WPIX has failed to afford a reasonable opportunity for the presentation of contrasting views; and that Senator Buckley, during the interview with Mr. Herschensohn of the U.S.I.A., supported the agency's current practices and attempted to demonstrate its importance by showing a film entitled "Czechoslovakia, 1968". In addition you state that Senator William Fulbright, as Chairman of the Senate Foreign Relations Committee, was personally attacked by Mr. Herschensohn during this program for his opposition to U.S.I.A.

The station responded to you by stating that as a result of Senator Buckley's interview with Mr. Herschensohn an opportunity for response by Senator Fulbright was provided, but that the Senator declined the opportunity. In addition, WPIX stated that it carried items relating to this matter in newscasts during the week preceding the Buckley broadcast and believes that this news coverage was responsive to the public's right to be informed.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material.

However, if a station presents one side of a controversial issue of public importance, it is required to afford reasonable opportunity for the presentation of contrasting views. This policy, known as the fairness doctrine, does not require that "equal time" be afforded for each side, as would be the case if a political candidate appeared on the air

during his campaign. Instead, the broadcast licensee has an affirmative duty to encourage and implement the broadcast of contrasting views in its overall programming which, of course, includes statements or actions reported on news programs. Thus, both sides need not be given in a single broadcast or series of broadcasts, and no particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure rather than the right of any individual to broadcast his views. It is the responsibility of the broadcast licensee to determine whether a controversial issue of public importance has been presented and, if so, how best to present contrasting views on the issue. The Commission will review complaints to determine whether the licensee can be said to have acted reasonably and in good faith.

Where complaint is made to the Commission, the Commission expects a complainant to submit specific information indicating: the basis for the claim that the station broadcast only one side of the issue or issues in its overall programming (complainant should include accurate summary of the view or views broadcast and presented by the station); and whether the station has afforded, or has expressed an intention to afford, reasonable opportunity for the presentation of contrasting viewpoints on that issue or issues. *Allen C. Phelps*, 21 F.C.C. 2d 12, 13 (1969). On the basis of the information before the Commission, it appears that you have not submitted specific information setting forth reasonable grounds for your conclusion that the licensee in its overall programming has failed to present opposing views on the issue with which you are concerned.

As to your allegation that Mr. Herschensohn personally attacked Senator William Fulbright's position regarding the U.S.I.A. as "very simplistic, very naive and stupid," Section 73.679 of the Rules and Regulations state that "a personal attack occurs when an attack is made on the honesty, character, integrity or like personal qualities of an identified person". The mere mention of a person or group, or even certain types of unfavorable references thereto, do not constitute personal attacks as defined by the Commission, and bona fide newscasts, bona fide news interviews, and on-the-spot coverage of a bona fide news event are exempt from the personal attack rule. Although it cannot be determined whether the program in question was the type exempt from the personal attack rule, it does not appear that the language broadcast can be considered a personal attack on the "honesty, character, integrity or like personal qualities" of Senator Fulbright.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
SUN NEWSPAPERS, INC., EDINA, MINN.
Concerning Fairness Doctrine Re Minneapolis Tribune and Station WCCO

FEBRUARY 16, 1973.

MR. CARROLL E. CRAWFORD,
President and Publisher, Sun Newspapers, Inc., 6601 West 78th Street, Edina, Minn.

DEAR MR. CRAWFORD: This refers to your January 11, 1973 complaint against stations WCCO and WCCO–TV, Minneapolis-St. Paul, Minnesota.

You allege that the *Minneapolis Tribune* and its affiliated broadcast stations WCCO and WCCO–TV carried news stories and issued reports covering the financial conditions of the *Sun Newspapers, Inc.*, of which you are the President; that these articles and newscasts demonstrated a joint and concerted effort on the part of the *Minneapolis Tribune*, WCCO and WCCO–TV to cause embarrassment and serious financial injury to *Sun Newspapers, Inc.*: that, in your opinion, these actions were "irresponsible, repetitious and malicious, which contained false statements, unfounded rumors and half-truths." In addition, your letter states that these actions raise serious questions concerning the intent of these media to exploit and enhance "their near monopolistic position" and that you feel such actions would not be considered to be in the public interest. You request the Commission to initiate an investigation in order to determine whether this licensee possesses the requisite qualifications to hold licenses from the Federal Communications Commission.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material.

"The general rule is that we do not sit to review the broadcaster's news judgment, the quality of his news and public affairs reporting, or his taste. The exceptions involve the 'fairness,' 'equal opportunity,' and 'personal attack' doctrines—designed not to affect *what* is presented, or to stifle the presentation of views, but rather to encourage a full, free and fair discussion." *Letter to ABC, NBC, CBS*, 16 F.C.C. 2d 650 (1969). With respect to the accuracy of program material or allegations that a station has distorted or suppressed news or has staged or fabricated news occurrences, the Commission's policy in this area is set forth in a number of statements, including its *Letter to Mrs. J. R. Paul*, 26 F.C.C. 2d 591 (1969), a copy of which is enclosed. As

you will note, the Commission believes that it, as the governmental licensing agency, should take action in the sensitive area of news reporting only when it has substantial extrinsic evidence that the licensee has deliberately distorted its news reports or staged news events.

In regard to your allegations that broadcast of the news items constituted an anti-competitive activity, you have provided no evidence other than inferences which might be drawn from the content of the news broadcasts. As you know, the Commission limits the number of radio and television stations which may be licensed to a single entity, and also takes cognizance of newspaper ownership under certain circumstances in determining whether there is an undue concentration of control over the media. Moreover, on July 15, 1970, in granting the applications for renewal of the licenses of WCCO and WCCO–TV, the Commission resolved media concentration issues in favor of the licensee. In this connection the Commission stated:

> As previously stated, we have both the duty and the authority, under our licensing powers, to consider media concentration. At the time we designated this proceeding for evidentiary hearing, we were also concerned with media concentration in the St. Paul-Minneapolis area because of the serious anticompetitive charges raised against Midwest. However, based upon all of the information now before us, we believe that the public interest would not be served by examining such media concentration in the context of the particular renewal proceeding and that, accordingly, such matters are more appropriately dealt with in general rule-making proceedings. In this regard we note that there is now a comprehensive outstanding inquiry in Docket 18110 dealing with the Commission's multiple ownership rules. (24 F.C.C. 2d 625, 677.)

Although a pattern of broadcasting certain types of program matter may provide grounds for determining that a licensee is using his facility in an anti-competitive way or otherwise to subordinate the public interest to his private interest, it does not appear that the broadcasts here described, in and of themselves, establish such practices.

In view of the foregoing no further action by the Commission is warranted at this time.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73-262

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
AMENDMENT OF SECTION 73.202, TABLE OF ASSIGNMENTS, FM BROADCAST STATIONS (ADRIAN, MICH., AND WEST LAFAYETTE, IND.)	Docket No. 19512 RM-1820 RM-1822

SECOND REPORT AND ORDER

(Adoped March 7, 1973; Released March 13, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has before it for consideration the FM channel assignment proposal, *RM-1822, West Lafayette, Indiana*, remaining for disposition in this proceeding, instituted by Notice of Proposed Rule Making, released on May 23, 1972 (FCC 72-430, 37 Fed. Reg. 10579). Previously, one proposal, RM-1791, Winchendon, Massachusetts, was severed from this proceeding and consolidated into Docket No. 19540 by Order, released July 11, 1972 (FCC 72-604). The other proposal, RM-1820, Adrian, Michigan, was disposed of by the First Report and Order, released herein on November 13, 1972 (FCC 72-997, 37 F.C.C. 2d 1021).

2. *West Lafayette proposal.*[1] the petitioner, Thomas Jurek, proposes the assignment of FM Channel 280A to West Lafayette, Indiana (population, 19,157), for a first FM assignment for which he can apply. West Lafayette is located in west-central Illinois, adjoining the larger community of Lafayette, Indiana (population, 44,955) on the west, separated only by the Wabash River and connected by bridges. Both communities are in Tippecanoe County (population, 109,378), in the same standard metropolitan statistical area (coextensive with Tippecanoe County), and in the same urbanized area (population, 79,117). While without an FM assignment or outlet, West Lafayette has an AM broadcast outlet, an unlimited-time AM educational operation (WBAA), licensed to Purdue University. It is also served by the Lafayette AM and FM broadcast stations. These number two commercial AM stations, one of which is an unlimited-time operation (WASK) and the other (WAZY), a daytime-only operation; three commercial FM stations, two of which operate on Class A channels (WAZY-FM and WXUS), and the other, on a Class B channel (WASK-FM); and an educational FM station (WJJE), operating on an educational channel assignment (220A). Station WLFI-TV at Lafayette also serves West Lafayette.

3. Comments supporting his West Lafayette Channel 280A pro-

[1] Population figures are from the 1970 U.S. Census reports unless otherwise specified.

posal were filed by Jurek. Comments opposing the proposal were filed by Lafayette Broadcasting, Inc. (Lafayette Broadcasting), licensee of Stations WASK(AM) and WASK–FM; by Tiprad Broadcasting Co., Inc. (Tiprad), licensee of FM Station WXUS; and by WCVL, Inc., licensee of Station WCVL, an unlimited-time AM broadcast station, at Crawfordsville, Indiana. Reply comments were filed by Jurek and the two opposing Lafayette licensees.[2]

4. *Crawfordsville, Indiana, counterproposal.* The WCVL comments also included a counterproposal, proposing the assignment of Channel 280A to Crawfordsville, Indiana, instead of to West Lafayette. Crawfordsville (population, 13,842) is located about 27 miles south of West Lafayette in Montgomery County (population, 33,930). In addition to WCVL's AM station (WCVL), Crawfordsville has one FM outlet, Station WNDY, which operates on Channel 292A, the only FM channel assigned to Crawfordsville and in Montgomery County. This station is licensed to Wabash College Radio, Inc., described by the licensee in its license file as an "Indiana not-for-profit corporation organized for the purpose of owning and operating a radio station as a facility which will provide training for college students." The opposing Lafayette licensees also support adoption of this alternative Channel 280A assignment proposal.

5. Channel 280A can be assigned to West Lafayette in conformance with all minimum mileage separation requirements without any change in other channel assignments and without adverse preclusionary effect on new adjacent channel assignments. As noted in the rule making notice on the proposal, however, a West Lafayette Channel 280A assignment would foreclose assignment of Channel 280A to Crawfordsville or to any one of three other communities in this area of Indiana (Logansport, Frankford or Delphi). Logansport (population, 19,255) has one AM broadcast station (WSAL) and two FM channels assigned (Channel 272A, occupied by Station WSAL–FM, and Channel 237A, occupied by Station WVTL at nearby Monticello). Frankford (population, 14,956) has one AM broadcast station (WILO) also and one FM channel (259) assigned, occupied by Station WILO–FM. Delphi (population, 2,582) is without an FM assignment or aural broadcast outlet. Other available FM channel assignment possibilities in this area appear nonexistent, and an opportunity was afforded in this proceeding for comparative consideration of any Channel 280A assignment proposals submitted for these communities with that for West Lafayette. Only one for Crawfordsville was submitted, and since this record evidences present demand and interest in assignment and use of Channel 280A only at West Lafayette or Crawfordsville, and there appear no public interest reasons for preferring the other three communities

[2] A letter opposing the use of Channel 280A at West Lafayette was also received from Charles L. Brown of West Lafayette. His opposition stems from probable interference from a West Lafayette Channel 280A station to reception in the West Lafayette area of Station WFIU, which operates on Class B Channel 279 at Bloomington, Indiana, located some 90 miles south of West Lafayette. Since the normal service contour of Class B FM stations which the Commission's rules recognize in the assignment of channels extends no more than approximately 35 miles, this consideration would not be a basis for not making the proposed Channel 280A assignment at West Lafayette. (It is noted also that since Bloomington is located in the same general direction as Crawfordsville, and the signal from a Crawfordsville station would be much stronger than that of the Bloomington Station (WFIU), the alternatively proposed assignment of Channel 280A to Crawfordsville would also be likely to cause interference to reception of the Bloomington FM station in the West Lafayette area.)

where Channel 280A could be assigned, considering their size and existing assignments and stations, we think it justifiable to narrow our consideration to West Lafayette or Crawfordsville for the requested Channel 280A assignment.

6. In support of his West Lafayette Channel 280A proposal, Jurek stresses in his comments, as he did in his prior showing, that West Lafayette, although contiguous to the larger community of Lafayette, is not a suburb of Lafayette but an independent "sister" city. To indicate that West Lafayette is an independent city of sufficient significance to warrant a first local FM outlet of its own, he points out that it has a completely separate and independent city government, its own police and fire department, schools, public library and 25 churches. He also points out that Purdue University, with 37,000 enrolled students, of which about 25,000 study at the West Lafayette campus, is situated in West Lafayette, as are a number of growing industries, such as Centralab Electronics, CTS Corporation, Lafayette Pharmacal, Lafayette Pipe Co., and Warren Industrial Aggregates Corporation. In addition he offers statistics to show that the per capita income in West Lafayette is higher than in Lafayette and that the population growth trend is greater in West Lafayette than in Lafayette. He bases this on the fact that between 1960 and 1970 West Lafayette increased from 12,680 to 19,157 in population (a 51 percent increase) whereas Lafayette increased from 42,330 to 44,955 (a 6 percent increase) in population.

7. Jurek affirms that if Channel 280A is assigned to West Lafayette, he will apply for the channel and, if authorized, build and operate on it. He urges that because of the importance of West Lafayette as a University Center, it is a "natural" place for an FM station and that an FM station there stands a much better chance for success than in some small rural community. He states that, if authorized to operate on Channel 280A at West Lafayette, he will install stereophonic transmission equipment and provide an entertainment service compatible with the "hi fi" equipment commonly used in the academic community without neglecting the public affairs, instructional, news, and other listening tastes of the community as a whole.

8. WCVL, in opposition to the Jurek West Lafayette Channel 280A proposal and in support of its alternative Crawfordsville Channel 280A proposal, contends that while West Lafayette is technically an independent community, the fact remains that it and Lafayette are part of the same urbanized area and the same Standard Metropolitan Statistical Area; form a single radio market, and, for all practical purposes, are a single metropolitan area whose two principal parts are connected by three bridges. Since there are two AM stations at Lafayette, and another AM station at West Lafayette, as well as 3 commercial FM stations at Lafayette (also an FM educational station), it urges that the needs of Crawfordsville for the channel are more compelling than those of West Lafayette since it has only two local stations (Station WCVL, its AM operation, and FM station WNDY, licensed to Wabash College Radio, Inc., which operates commercially on Channel 292A), neither of which, it asserts, is able at the present time to meet all of the needs of the residents of the Crawfordsville area.

9. In support of this position, WCVL avers that Station WNDY is not a full-time FM station in any real sense and does not fully meet Crawfordsville's needs for local FM service since it normally is not in operation during the summer months. It notes that in 1972 Station WNDY suspended operation on April 30th and was not scheduled to resume operation until the opening of college in the fall.[3] WCVL also points out that its unlimited-time AM station at Crawfordsville, which operates with 250 watts power and is required to use a directional antenna at night, is severely restricted in coverage and cannot fully satisfy the needs of the area normally associated with Crawfordsville. The situation, it claims, is especially disturbing in the early morning when there is a public need for school information and up-to-the-minute information about severe weather conditions. Because of the restricted nighttime coverage of its AM station, it states that many of the station's daytime listeners are deprived of its nighttime sports and other program services. WCVL estimates that almost half of the more than 33,000 people in Crawfordsville's home county (Montgomery) are without adequate broadcast service, and it avers that, if Crawfordsville is assigned Channel 280A, it will promptly file an application for use of the channel to provide such service.

10. The Lafayette licensees, Lafayette Broadcasting and Tiprad, essentially oppose the West Lafayette Channel 280A proposal on grounds that Lafayette and West Lafayette are one market and should be so considered in making a fair, efficient and a just assignment of FM frequencies pursuant to Section 307(b) of the Communications Act; that both Lafayette and West Lafayette are more than adequately served by existing AM and FM commercial and educational stations in this market; that there is no need for another FM station in this market area to serve any unserved needs or interests of West Lafayette; and that the economic impact of an additional FM station in the market would adversely affect the existing FM stations serving the area. Tiprad claims that the petitioner's request is nothing more than an attempt to secure an additional channel for the Greater Lafayette Area without regard to its effect on the other local broadcast media, the needs or interests of West Lafayette, or the inability of West Lafayette to support a station. Lafayette Broadcasting urges that it is not efficient procedure to make an assignment to a small town in a metropolitan area, and then at the application stage to decide that the 307(b) mandate requires a showing on whether the small town has programming needs distinct and different from those of the larger city; whether the program needs of the small town are being met by the existing station, and whether there is financial support for the proposed station available in the small town. *Berwick Broadcasting Corporation*, 20 F.C.C. 2d 393 (1969). It is submitted that before assigning an FM channel to West Lafayette, the Commission should consider whether better use might be made of the channel in another lo-

[3] Our records show that Station WNDY requested permission to remain silent for that period, giving as reasons therefore, that, due to the fact that the station is operated by Wabash College students, there would be insufficient personnel available to maintain operation during that period; that the station's engineer would be leaving the area for the summer; and that the station could not afford to hire personnel over the summer. Permission to suspend operation of Station WNDY from April 30, 1972, through summer vacation was granted on April 12, 1972.

cality, especially in view of the scarcity of FM channels in this area of Indiana. In their reply comments, both of the Lafayette licensees support the WCVL counterproposal to assign Channel 280A to Crawfordsville instead of to West Lafayette since they feel that the Crawfordsville area is inadequately served at present by the local 250 watt AM station and the FM station (which normally operates only from September to April) at Crawfordsville and would benefit substantially from having a first "real" FM station.

11. To buttress their contention that Lafayette and West Lafayette are one market the Lafayette opponents of the proposed West Lafayette FM assignment state that, besides being adjacent communities in the same county and in the same urbanized and standard metropolitan statistical area, these cities are not considered separate cities by local residents and that the area of Lafayette and West Lafayette is known as Greater Lafayette; they also point out that these cities are represented by a single Chamber of Commerce, known as the Greater Lafayette Chamber of Commerce; that there is one United Fund Service for both cities; that residents of each city shop and do business in both cities as distance is no factor, and that the banks, chain stores and many other stores have branches and stores in both cities. Although Purdue University, the largest employer in the area, has its campus in West Lafayette, they inform that over half of the University's 6,000 employees live in Lafayette. Tiprad also observes that the proponent of the West Lafayette proposal in attempting to differentiate West Lafayette from Lafayette called attention to the number of growing industries in West Lafayette but that, of the five listed by Jurek, two are located in Lafayette (Lafayette Pipe Company and Lafayette Pharmacal), and there is no listing in either city for a third (Warren Industrial Aggregate Corporation). Tiprad further notes that the proponent, in pointing to the growth of West Lafayette between 1960 and 1970, failed to mention that much of the growth was largely the result of annexation and that between 1968 and 1970 West Lafayette's population declined from 20,100 to 19,957.

12. In taking issue with Jurek's claim that West Lafayette needs a first local FM outlet, the Lafayette licensee opponents contend that he makes no showing that there is any dearth of service by existing stations to either West Lafayette or Lafayette or that his proposed West Lafayette FM assignment is needed to serve any unsatisfied local needs of the community. Tiprad notes that, based on plans revealed in a submitted excerpt in the Lafayette and West Lafayette Journal and Courier on May 23, 1972, and a submitted copy of an official county ordinance, it appears that Jurek intends to locate a studio and transmitter for its proposed West Lafayette FM operation southeast of Lafayette, thus placing the entire city of Lafayette between the station and West Lafayette and providing Lafayette with a better signal than West Lafayette, and to feature country and western music, old hit tunes, and news. It is submitted that such a program service could not possibly serve as a basis for adding an FM channel to an area which is already adequately served by existing media. To show that both communities are well served, examples of programs carried by the existing commercial and educational FM stations in the market are given. With

109-031—73——4

its reply comments, Lafayette Broadcasting also submits letters from the Mayors of Lafayette and West Lafayette and officials of the Greater Lafayette Chamber of Commerce which comment favorably on the local aural broadcast coverage given to news and special events in both cities.

13. As to the economic impact of an additional FM station in the Lafayette-West Lafayette market, Tiprad states that it is already a loss market for FM stations, pointing to the fact that FCC AM–FM Broadcast Financial Data for 1970 (Mimeo No. 78309, released January 6, 1972, Table 20) show that 1970 FM revenues were only $54,160, based on reports from all three Lafayette commercial FM stations. Although no profit and loss figures are published for Lafayette-West Lafayette, it submits that it is inconceivable that that three FM stations could split such revenues profitably. As for its own independent FM station (WXUS), Tiprad states that it has operated at significant losses since its inception but that it now sees some prospect of reversing this pattern. The advent of a fourth FM competitor for existing advertising revenues in this market would, it believes, significantly lessen or extinguish that possibility. Further, it claims that, in the face of reduced revenues which a new station is likely to bring, it is very likely that it would have to curtail the operating hours of Station WXUS, which now operates on a 24-hour a day basis, or give up the wire service (UPI) which it uses in order to reduce costs. Where loss markets, such as Lafayette-West Lafayette for FM stations, are concerned, Tiprad urges that it is no service to the community to further dilute the existing economic base by adding an additional station which can only have an adverse impact upon the existing media. It further claims that the economic base in the Lafayette-West Lafayette market primarily lies in Lafayette and not West Lafayette where there are only seven manufacturing establishments [4], six wholesale trade establishments [5], and only 102 retail trade establishments as compared to nearly five times that number in Lafayette. Both Lafayette opponents also submit that there has been no showing by the West Lafayette proponent as to the ability of West Lafayette to support the proposed FM station.

14. In his reply comments, Jurek urges that it would be contrary to the mandate of Section 307(b) to allocate frequencies in a fair, efficient, and equitable manner to prefer Crawfordsville over West Lafayette for the requested Channel 280A assignment since it is not only considerably smaller than West Lafayette but already has both an existing AM and FM station while West Lafayette has but one AM station. Moreover, he submits that the WCVL proposal for use of the channel has no potential to bring about greater diversification of the ownership of media of mass communication whereas his proposal for use of the channel has that potential.

15. We think it clear from this record that the assignment of Channel 280A to Crawfordsville for a second FM assignment is more in furtherance of the "307(b)" mandate and the public interest than

[4] Source given: 1967 Census of Manufacturers-Area Statistics, Indiana, 15–6, 15–7 (Pt. 1, Vol. III).
[5] Source given: 1967 Census of Business—Wholesale Trade, Indiana, Area Statistics, 16–11 (Vol. IV).

would be the assignment of the channel to West Lafayette for a first such assignment. Taking into account only the size of each community and the number of local aural outlets each has, normally, we might conclude that West Lafayette warranted the proposed assignment over Crawfordsville. However, West Lafayette, albeit an independent community, is an integral part of the Lafayette-West Lafayette metropolitan area and, while it has only one local AM outlet actually located within its boundaries, it receives multiple local aural services also from the seven Lafayette stations (2AM, 4 FM, one of which is an educational station) which serve this metropolitan area. The West Lafayette proponent has made no showing which would demonstrate that West Lafayette has any local programming needs distinct from the rest of the Lafayette-West Lafayette metropolitan area or any which are not or cannot be satisfied by the eight existing aural commercial and educational stations in this market, and the showings of the Lafayette oppenents tend to indicate that it is well served. We do not here assess the economic impact of another FM station in this market upon the existing local stations and overall program service to the public upon the showing made herein, or without an application with a specific proposal before us. Similarly, we make no finding concerning whether West Lafayette itself could provide the principal support for its own commercial FM outlet or could exist and thrive without looking to the larger community of Lafayette for support.

16. On the other hand, this record evidences that Crawfordsville and Montgomery County, due to the technical limitations restricting the coverage of the Crawfordsville AM outlet and the operating problems of the student-managed FM outlet there, is without even one local aural outlet which provides a county-wide, year-round broadcast service. Since Channel 280A is technically feasible for a Crawfordsville assignment, we think its assignment and use there to meet the need for a first year-round local aural service throughout all of Montgomery County represents a better use of the frequency and better serves the public interest than would its assignment and use at West Lafayette for an eighth aural outlet and service in the Lafayette-West Lafayette metropolitan area. We also are not deterred from making this assignment to Crawfordsville because of the claimed lack of potential of the WCVL proposal for implementing our important goals for greater diversification of broadcast ownership and programming sources. While this is a relevant consideration at the application stage, it cannot be realistically assessed in channel assignment proceedings such as this, for while WCVL, the licensee of the existing AM outlet at Crawfordsville, is the only one to indicate an interest in establishing a new FM outlet at Crawfordsville in this proceeding, it is by no means certain that it will be the only applicant or the successful applicant for Channel 280A once it is assigned. In any case, because of a number of overriding public interest considerations, our rules at the present time do not preclude common ownership of AM and FM stations in the same market when otherwise found to be warranted in the public interest.

17. In view of the foregoing, and pursuant to the authority contained in Sections 4(i), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, IT IS ORDERED, That effective April 23, 1973, the FM Table of Assignments, Section 73.202(b) of

the Rules, IS AMENDED, insofar as the community named is concerned, to read as follows:

City	*Channel No.*
Crawfordsville, Indiana	280A, 292A

Canadian concurrence has been obtained for this channel assignment to Crawfordsville which is within 250 miles of the United States-Canadian border.

18. IT IS FURTHER ORDERED, That the request (RM–1822) of Thomas Jurek to assign Channel 280A to West Lafayette, Indiana, IS DENIED.

19. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Renewals of
BROADCAST LICENSES FOR FLORIDA

FEBRUARY 8, 1973.

Staff action of January 31, 1973 reviewing Broadcast licenses for Florida, approved.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON ON FLORIDA RENEWALS

On January 31, 1973, the Commission noted actions to be taken by the staff under delegated authority in connection with disposition of February 1, 1973, broadcast renewal applications for Florida. Commissioner Johnson dissented and has now issued the attached statement.

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

Bent upon renewing as many broadcast station licenses as fast as is humanly possible, the Federal Communications Commission once again ignores both the public interest and the dictates of its own rules.

First, the majority—as it does each month—refuses to find fault with the license renewal applications of those stations (this time in the Florida-Puerto Rico-Virgin Islands renewal group) which have failed to broadcast the barest minimum of informational programming: 5% news, 1% public affairs, and 5% "other" non-entertainment programming.

Eleven of the 234 standard broadcast stations [1] and 9 of the 33 TV stations [2] in this group propose to broadcast less than 5% news weekly. Seven standard broadcast stations propose less than 1% public affairs,[3] and 27 standard broadcast stations [4] and 1 TV station [5] will

[1] WAYR, Orange Park, Fla.; WCMQ, Miami, Fla.; WIVV, Vieques, P.R.; WKFE, Yauco, P.R.; WMBM, Miami, Fla.; WNIK, Arecibo, P.R.; WOCN, Miami, Fla.; WPFE, Pensacola, Fla.; WRSG, San German, P.R.; WWBC, Cocoa, Fla.; and WWSD, Monticello, Fla.

[2] WAPA, San Juan, P.R.; WKBM, Caguas, P.R.; WKID, Fort Lauderdale, Fla.; WOLE, Aguadilla, P.R.; WORA, Mayaguez, P.R.; WRIK, Ponce, P.R.; WSUR, Ponce, P.R.; WTOG, St. Petersburg, Fla.; and WXLT, Sarasota, Fla.

[3] WABA, Aguadilla, P.R.; WCID, Juncos, P.R.; WKIZ, Key West, Fla.; WKXY, Sarasota, Fla.; WOKB, Winter Garden, Fla.; WPRA, Mayaguez, P.R.; and WVJP, Caguas, P.R.

[4] WCAI, Ft. Myers, Fla.; WIRK, West Palm Beach, Fla.; WKFE, Yauco, P.R.; WKTZ, Arlington, Fla.; WLEY, Cayey, P.R.; WVJP, Caguas, P.R.; WWBA, St. Petersburg, Fla.; WFUN, South Miami, Fla.; WGGG, Gainesville, Fla.; WKXY, Sarasota, Fla.; WLUZ, Bayamon, P.R.; WNVY, Pensacola, Fla.; WQPD, Lakeland, Fla.; WYOU, Tampa, Fla.; WAPA, San Juan, P.R.; WBJW, Winter Park, Fla.; WBMJ, San Juan, P.R.; WJCM, Sebring, Fla.; WJNO, West Palm Beach, Fla.; WKKO, Cocoa, Fla.; WMBR, Jacksonville, Fla.; WMFJ, Daytona Beach, Fla.; WPUL, Bartow, Fla.; WTRR, Sanford, Fla.; WVOJ, Jacksonville, Fla.; and WVOZ, Carolina, P.R.

[5] WLTV, Miami, Fla.

devote less than 5% of their time to other entertainment programming This is preposterous. *See, e.g.*, my dissenting statement in *Washington Renewals* 1972, —— FCC 2d —— (1972).

Equally troublesome is the majority's refusal to send letters of inquiry to those stations in this renewal group whose employment practices raise serious questions under our equal employment opportunity regulations. The majority approves the Broadcast Bureau's decision not to send such letters to a substantial percentage of those stations which either do not employ minority group members or women or which have shown a decline in the number of such persons employed over the past year. Yet the majority has no intelligent way of knowing—indeed, it would prefer not to know—whether the Bureau's selection process makes any sense.

I suppose, however, that such capriciousness has no truly harmful effect if only because, once the stations which have been queried finally answer our letters of inquiry, the majority is just going to renew their licenses anyhow. *See, e.g., Pennsylvania-Delaware Broadcasting Stations*, 38 F.C.C. 2d 158 (1972).

I dissent.

F.C.C. 73-269

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LICENSEE RESPONSIBILITY TO EXERCISE ADEQUATE CONTROL OVER FOREIGN LANGUAGE PROGRAMS

MEMORANDUM OPINION AND ORDER

(Adopted March 7, 1973; Released March 13, 1973)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONER REID ABSENT.

1. The Commission has before it a request of the National Association of Broadcasters (NAB) filed September 8, 1971 in accordance with Section 1.2 of the Rules for a Declaratory Ruling "concerning acceptable modes of station operation in the foreign language programming area."

2. NAB seeks clarification of the Commission's policies regarding licensee knowledge of and control over foreign language programming in light of the Commission's Public Notice of March 30, 1967, 9 RR 2d, 1901, the Commission's rulings in various individual cases, and particularly, the language of the Hearing Examiner in his Initial Decision in *Trans America Broadcasting Corp.*, 33 FCC 2d 606 (1970).

3. In the cited Public Notice we cautioned licensees to maintain adequate controls over foreign language programming, pointing out that in order to exercise such responsibility the licensee must have knowledge of the content of such broadcasts. We pointed out that certain procedures then being followed by some licensees were, in and of themselves, inadequate; i.e., permitting "only persons of established reputation for judgment and integrity to use their facilities; requiring submission in advance of English translations of copies of commercial announcements used in such programs; making recordings of all such broadcasts and retaining them "for future reference." We stated further that,

> Licensee responsibility requires that internal procedures be established and maintained to insure sufficient familiarity with the foreign languages to know what is being broadcast and whether it conforms to the station's policies and to requirements of the Commission's rules.
>
> Failure of licensees to establish and maintain such control over foreign language programming will raise serious questions as to whether the station's operation serves the public interest, convenience and necessity.

4. NAB contrasts this general language with a passage from the Hearing Examiner's Initial Decision in *Trans America*, *supra*, at p. 620:

> In particular, there must be assurance that the licensee will exercise real control over the foreign language programs which are broadcast over its fa-

cilities. This control must encompass a systematic and regular pre-audit of all foreign language programs by a paid employee of the station who has demonstrated capability to understand the language involved.

NAB states that,

Several broadcast licensees have demonstrated to NAB that strict compliance with the FCC directive specified in the *Trans America* case effectively precludes continued broadcast of their foreign language programming and denies service to a significant segment of their audience which looks to this programming as their only real source of broadcast service. Yet, judged by a general standard of licensee responsibility for, and control over, programming, these licensees in the past have made more than scrupulous efforts to insure that their broadcasts in foreign languages are consistent with the public interest.

NAB does not deny "the clear responsibility of all licensees to maintain control over their programming," but it believes that "licensees fully aware and/or fully reminded of their duty with respect to specific subjects of programming are, in turn, fully capable on their own of establishing the appropriate and effective internal procedures demanded." NAB asserts that the propriety of the "self-determination" approach was recognized by the Commission itself in its *Report and Order* in Docket No. 18928, terminating a rule-making proceeding regarding telephone interview programs.

5. Petitioner contends that "several of the controls which the Commission has spelled out are really no controls at all; licensees are thus bound to implement a set of awkward and costly procedures which in fact still don't create any greater protection against programming problems." It asks what insurance there is that a person paid to monitor a foreign language program is any more or less trustworthy than the individual presenting the program, and states that "a thorough background check on a particular performer or announcer and a determination of his reliability is worth more than a routine hiring of someone who simply speaks the language in question" and that "This is all the more true when the performer or announcer is a *paid* station employee himself." NAB further states that the problem of program content "is evidenced more frequently in English programming than in programming presented in a foreign language." Accordingly, NAB believes "the Commission should relegate the matter of control over foreign language programming to the same general status of the well established treatment licensees are expected to give all programming . . ."

6. Specifically, NAB objects to a requirement that all foreign language programming be monitored or pre-audited by a paid employee with a demonstrated capability to understand the language involved. It believes "stations should be permitted to use their own regular employees in foreign language programming without the need for additional monitors." When a foreign language program is presented by a non-employee, NAB asserts use of a monitor should not be required (1) "where a thorough background check of the performing individual(s) has been undertaken, (2) the station is satisfied with his judgment and integrity and has apprised the person of the station's policies and the FCC requirements and (3) has received from the performer a certification that his presentation contains no improper material." If a background check is not possible or the FCC will not accept the above-proposed arrangement, NAB states that "a station

should be permitted to use as a monitor any individual with a demonstrated capability to understand the language involved, *whether he be a paid employee or not*, so long as he is of known good character, has been apprised of the station's policies and the requirements of the Commission's rules, and certifies as to the propriety of the foreign language broadcast which he has monitored." NAB concludes that,

> Overall, a relaxation of the apparent Commission policy on foreign language programming control would return to the air a needed and highly valuable type of program matter upon which so many individuals newly arrived to this country depend.

DISCUSSION

7. We agree that a clarification of our policies in this area is desirable, in view of the apparent (and perhaps understandable) confusion among some licensees as to their responsibilities, and of some of the arguments set forth in NAB's petition—most particularly that as the result of some licensees' understanding of our requirements, broadcast service to persons unfamiliar with the English language has been seriously curtailed. It should be noted initially that we have never held or implied that foreign-language programming should be denied when a demonstrable need for it exists. Thus, the Review Board in *La Fiesta Broadcasting Co.*, 6 FCC 2d 65 (1965), found in a comparative proceeding that an applicant which proposed to broadcast all-Spanish-language programming was entitled to a preference in satisfying demonstrated needs over another which proposed only part-Spanish-language programming, on the basis of a showing of an unfilled need for Spanish-language programming. Moreover, as set forth in our *Programming Policy Statement*, 25 Fed. Reg. 7291, 7295, one of the major elements usually necessary to meet the needs of the community is "Service to Minority Groups," and from the earliest days of regulation the FRC and the FCC have commended broadcasters for foreign language programming designed to serve the needs of minority groups in their communities. *Johnson-Kennedy Radio Corp.*, (WJKS), Docket No. 1156, affirmed *sub nom F.R.C.* v. *Nelson Bros. Co.*, 289 U.S. 266, 270–71 (1933); *United States Broadcasting Corp.*, 2 FCC 208, 233 (1935).

8. The desirability of foreign-language program service does not, however, relieve the broadcaster of his responsibility for his programming, which in turn necessarily depends upon his adoption of reasonable procedures for assuring himself that the programming conforms to his policies and the requirements of the law. We cannot carve out in this area a special exception to licensee responsibility. Rather, our task is to set forth policies and to suggest certain procedures for implementation of them which will substantially assure exercise of licensee responsibility, while at the same time seeking to avoid imposition of unnecessary burdens.

9. We begin by reaffirming the general policy set forth in our Public Notice, *supra*, including our conclusion that certain procedures upon which some licensees were relying for knowledge of and control over foreign language programming appeared, in and of themselves, to be inadequate. For the same reasons, we must reject some of the contentions of the petitioner here: e.g., that a "background check" of a per-

former would assure licensee control and that letting a performer monitor his own program would be as efficacious as arranging for another party to monitor it. Nor do we agree with NAB that our termination of the proposed rule making in Docket No. 18928 is precedent for the requested relief sought. The proposed rules would not have required greater licensee knowledge of or control over what was being broadcast in telephone interview programs; rather, they would have required the licensee to obtain (but not broadcast) the names of persons who called in, and to retain such names, as well as recordings of the programs, for 15 days in order that they might be inspected or auditioned by "interested parties," e.g., persons attacked by anonymous callers.

10. Although we reaffirm our policy statement of 1967, we believe in light of NAB's petition and numerous inquiries the Commission itself has received as to interpretation of that statement, that amplification of it is in order. First, we disavow any requirement that every foreign language broadcast be pre-auditioned by a paid, outside monitor. In many cases, such programs are broadcast by regular employees of the stations—employees who are familiar with statutory requirements and the Commission's rules and policies on program matters, as well as the licensee's own policies, and who have demonstrated such knowledge to the licensee as well as their own responsibility. This does not mean, of course, that the licensee can disclaim responsibility for the content of such broadcasts by employees any more than he can disclaim responsibility for violations by his English-language announcers.

11. Moreover, we think that, so long as the licensee recognizes his responsibility for overall adherence to the statutes, rules and Commission policies, and has fully familiarized those using his facilities with them and station policies, the licensee could conclude that he need not engage an outside monitor to listen to and report on every broadcast by a non-employee in a language with which no employee of the licensee is familiar.[1] Unless the licensee has reason to suspect that the non-employee is violating the requirements of the licensee and the Commission, he may, for example, arrange for an outside monitor to listen to, and report to the licensee on such broadcasts on a spot basis, choosing broadcasts at random—for example, one or more broadcasts a week of a daily program and one or more a month of a weekly program. It is, of course, assumed that the outside monitor has been made familiar with the licensee's policies and the Commission's requirements with respect to programming; e.g., obscenity, personal attacks, the fairness doctrine, broadcast of false or misleading advertising, lottery information, fraudulent schemes, equal opportunities for political candidates, the licensee's limitations on total commercial content, sponsorship identification. On the other hand, a licensee could reasonably conclude that more stringent precautions are required to carry out his public trust.

12. As for NAB's contention that there is no assurance that a person paid to monitor a program is any more trustworthy than the individual presenting the program, we believe it is obvious that a third

[1] If any responsible employee of the licensee understands the language and monitors the programs of non-employees, there obviously is no need to engage outside monitors.

party, independent of the performer and responsible only to the licensee, is likely to be a more reliable source of information regarding violations than the performer himself. Many foreign-language programs are broadcast by independent time-brokers, who buy time in blocks from the station, sell their own advertising, and produce their own programs. Thus, there may be a basic conflict of interest between the time-broker's tendency to increase his income by accepting false or misleading commercials, for example, and his duty to observe the Commission's and the licensee's policies. Similarly, the Commission has discovered over the years many instances in which time-brokers were devoting more of their broadcast time to commercials than the licensee's policy permitted; also, instances in which brokers have sold time to competing political candidates at different rates, or at higher than regular commercial rates, in violation of the statute and the Commission's rules. Thus, mere reliance on a foreign-language broadcaster who is not a station employee to report his own violations to the licensee obviously would not be likely to assure licensee exercise of his responsibilities.

13. NAB also apparently objects to a condition that outside monitors be paid. We will not lay down a flat requirement that the monitors be paid, but it has been our experience in many cases that where monitors are not paid by the licensee they do not regularly monitor and report on the programs; in fact, in most cases coming to our attention, the device of unpaid, voluntary monitors has proved to be a sham. We do not rule, however, that there may not be circumstances in which an unpaid monitor would serve as efficiently and responsibly as one who is paid. We merely point out that it is the licensee's responsibility to assure that his and the Commission's requirements are complied with in his programming, and that if unpaid monitors are used, the licensee should take special precautions to assure himself that his purpose in engaging a monitor is being fulfilled.

14. In the foregoing paragraphs, we have suggested some guidelines for the licensee, and have tried to make clear that although some procedures have proven inadequate for that purpose, we do not intend to lay down any rigid formula for achievement of it. It is clear that a licensee cannot insure operation in the public interest unless he has a familiarity with the content of his programs; for example, he cannot provide suitable access to ideas, opinions and information of public importance if he has no such familiarity, nor can he comply with the fairness doctrine, personal attack rules, or any of the other requirements of the statute or the Commission's rules and policies. However, as we stated in *Wolfe Broadcasting Corp.*, 32 FCC 2d 761, 763 (1971):

> [W]e believe it would be administratively impossible to determine for each licensee who presents foreign language programming, whether or not the internal procedures he has implemented to exercise proper control are "required," unnecessarily stringent, or "reasonable" in light of all the factors involved. Certainly the individual licensee is in a far better position than we to assess his problems and requirements in this area. Again, we state that, absent substantial extrinsic evidence of intentional abuse, our only legitimate concern can be whether the procedures followed allow a broadcaster to maintain sufficient control over his programming.

15. Thus, while again reminding licensees of their responsibility in this matter and pointing out some methods of exercising this respon-

sibility which have in our experience proved effective and others which have proved ineffective, we still leave to the licensee the determination of what particular procedures are in his case necessary to the exercise of proper control over programming.

16. Accordingly, the request of the National Association of Broadcasters is to the extent reflected above GRANTED and, in certain respects, as also indicated above, is DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73–198

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of LEE GILBERT, JAMES L. PUTBRESE, AND KEITH E. PUTBRESE, ASSIGNORS and WSUF BROADCASTING CO., INC., ASSIGNEE For Transfer of Control of Adams Getschal Broadcasting Co., Inc., Licensee of Station WSUF, Patchogue, N.Y.	BTC–7046

FEBRUARY 20, 1973.

MR. IRA C. WOLPERT,
Deckelbaum and Wolpert,
1140 Connecticut Avenue,
Washington, D.C.

DEAR MR. WOLPERT: On December 26, 1972 an application was filed with the Commission to transfer control of Adams Getschal Broadcasting Company, Inc., the license of Station WSUF, Patchogue, New York, from Lee Gilbert, James L. Putbrese and Keith E. Putbrese to WSUF Broadcasting Company, Inc. (BTC–7046). That application was accepted for filing on January 18, 1973. Pursuant to Section 1.580(i) of the Commission's rules any Petition to Deny the application must be filed by February 20, 1973.

On February 12, 1973 you, acting as counsel for Ziger, Reznick and Fedder, an accounting firm and creditor of the above-named licensee, filed a letter with the Commission asking for "an extension of time of 30 days from the date that the promised balance sheet is submitted to the Commission to file a Petition to Deny the above-referenced application." In support of your request for the extension of time you allege:

> (1) We have undertaken a review of the Commission's files, and are unable to conclude that as promised at Exhibit D of the transferor's portion of the application, a balance sheet has been submitted to the Commission. It is imperative that interested parties have an opportunity to review that balance sheet in order that a final evaluation can be undertaken as to the position this transfer will leave them in.
>
> (2) Further, at paragraph 6 of the Agreement, it states that the licensee corporation was to deliver to WSUF Broadcasting Company, Inc., a schedule of all known debts, obligations and accounts payable. Clearly, without a review of that schedule, it will be impossible for creditors to evaluate their situation or for the Commission to make a final determination as to the financial qualification of the transferees, since without that schedule, their obligations will not be clear.

In view of the fact that the above-mentioned transfer application was filed with the Commission in an incomplete manner, thereby preventing your full review of the application, and since the necessary amendment was placed on public file on February 13, 1973, thereby allowing

you only 7 days to study this filing and to prepare your item, you are hereby granted an extension of time to and including ten (10) days from the date of this correspondence.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73-270

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF ELI DANIELS AND HARRY DANIELS, D.B.A. HEART OF THE BLACK HILLS STATION, LICENSEE OF RADIO STATION KDSJ, DEADWOOD, S. DAK.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted March 7, 1973; Released March 12, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has under consideration (1) its Notice of Apparent Liability dated August 18, 1971, addressed to Eli Daniels and Harry Daniels, d/b/a Heart of the Black Hills Station, licensee of Radio Station KDSJ, Deadwood, South Dakota and (2) the response of the licensee dated September 24, 1971 to the Notice of Apparent Liability.

2. The Notice of Apparent Liability for forfeiture was issued in this proceeding in the amount of one thousand dollars ($1,000) for violation of the terms of the station authorization and Section 73.87 of the Commission's Rules, for operation from 6:00 a.m. local time with non-directional daytime mode and power, prior to the sunrise times specified in the station license, on November 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 16, 17, and 18, 1970, and also for violation of Section 73.111(a) of the Commission's Rules for failure to keep maintenance logs from October 10, 1970 to November 20, 1970.[1]

3. Licensee responded to the Notice of Apparent Liability by letter of September 24, 1971 requesting that the forfeiture be rescinded. As the basis for this request, licensee, in substance, contends that it did not violate Section 73.87 of the Commission's Rules or the terms of the station authorization for the reason that a proper interpretation of the station's license and the 1968 certificate of renewal permitted pre-sunrise operation with daytime non-directional mode and daytime power of 1,000 watts. In support of this claim, licensee argues as follows: (a) When licensee's 1965–1968 station license was granted on November 19, 1965, Section 73.87 of the Rules then permitted transmissions of programs between 4:00 a.m. local time and local sunrise with a station's authorized daytime facilities; (b) the 1965–1968 station license was renewed on March 29, 1968 for the period ending April 1, 1971 by FCC Form 360; (c) the Form 360 referenced the

[1] The average hour of local sunrise specified in the 1965–1968 station license for November, 1970 was 6:45 a.m. Mountain Standard Time.

license ending April 1, 1968 as the license being renewed and further stated, in part:

> This certificate serves as a renewal of the reference radio station license on the same conditions and in accordance with the same provisions for the term ending April 1, 1971.

and (d) the "pre-sunrise conditions" were changed by the Commission without notification to KDSJ; therefore, operation prior to sunrise was permitted by the 1968–1971 license renewal. Consequently, licensee claims it has committed no violation of the terms of its station license or Section 73.87 of the Rules.

4. The basic instrument of authorization (i.e., the 1965–1968 station license) provides in its introductory statement that it is "Subject to the provisions of the Communications Act of 1934, and subsequent Acts, and Treaties, and Commission Rules made thereunder, and further subject to conditions set forth in this licensee . . ." It is to be noted that the conditions are those "set forth in this license . . . ." Neither the KDSJ 1965–1968 station license, nor the 1968 renewal thereof, set forth any conditions permitting the operation of the station with the non-directional daytime mode prior to the average hours of local sunrise specified in the license. Presunrise operation must therefore be governed by the Commission's Rules to which the station license is expressly made subject.

5. Since 1965 several changes have been made in the Rules pertaining to presunrise operation. Section 73.99 of the Rules was adopted, effective August 15, 1967, requiring that a Presunrise Service Authority (PSA) be obtained from the Commission by a Class III station licensee for permission to operate with the daytime antenna system until local sunrise. Section 73.99 also provided that permissible power for a Class III station, to be specified in the PSA, shall not exceed 500 watts.[2] At the same time, effective August 15, 1967, Section 73.87 of the Rules was amended to the effect that no standard broadcast station shall operate at times, or with modes or powers, other than those specified in the basic instrument of authorization (the station license) unless the licensee obtains a Presunrise Service Authority permitting deviation therefrom, pursuant to Section 73.99 of the Rules. The licensee here never requested a PSA from the Commission.

6. It thus appears that licensee has operated during presunrise hours repeatedly, without regard to the above-mentioned changes in the Rules, in violation of Section 73.87 of the Rules and the terms of the station license on the dates heretofore mentioned. Licensees are chargeable with knowledge of the rules governing the station for which they are licensed. *KIRO, Inc.*, 19 FCC 2d 641 (1969), 17 RR 2d 315. Oversight or failure to be aware of the Commission's requirements will not excuse a licensee from its obligation to operate its station in compliance with the terms of the authorization and the Commission's Rules. *Empire Broadcasting Corp.*, 25 FCC 2d 68 (1970), 19 RR 2d 1191.

7. In connection with the response to the Notice of Apparent Liability for forfeiture, licensee submitted copies of the "transmitter" logs (operating logs) for KDSJ for the period from October 10,

[2] KDSJ is a Class III station. KDSJ could not have obtained a PSA for power in excess of 500 watts in the non-directional mode from 6:00 a.m. to local sunrise.

1970 to November 20, 1970, in support of licensee's statement that the entries required to be made in the maintenance log by Sections 73.111 (a) and 73.114 of the Rules were in fact entered in the KDSJ "transmitter" logs. An examination of the submitted logs reveals this statement to be true. In a former reply, licensee stated that separate operating logs and maintenance logs would be kept thereafter. Under these circumstances, we have determined to remit liability for forfeiture for violation of Section 73.111(a) of the Rules and reduce the amount of the forfeiture to eight hundred dollars ($800).

8. Since we have determined that licensee's violations of Section 73.87 of the Commission's Rules were repeated, we find it unnecessary to make an additional determination as to willfulness of violations. *Paul A. Stewart*, FCC 63–411, 25 RR 375 (1963).

9. In view of the foregoing, IT IS ORDERED, That Eli Daniels and Harry Daniels, d/b/a Heart of the Black Hills Station, licensee of Radio Station KDSJ, Deadwood, South Dakota, FORFEIT to the United States the sum of eight hundred dollars ($800) for repeated failure to observe the terms of the station authorization and Section 73.87 of the Commission's Rules. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Treasurer of the United States. Pursuant to Section 504(b) of the Communications Act of 1934, as amended, and Section 1.621 of the Commission's Rules, an application for mitigation or remission of forfeiture may be filed within thirty (30) days of the date of receipt of this Memorandum Opinion and Order.

10. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by Certified Mail—Return Receipt Requested to Eli Daniels and Harry Daniels, d/b/a Heart of the Black Hills Station, licensee of Radio Station KDSJ, Deadwood, South Dakota.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

109-031—73——5

F.C.C. 73-173

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by ILLINOIS VALLEY COMMUNICATIONS, INC., PEORIA, ILL. For Tax Certificate Re Assignment of License	BALH-1579

FEBRUARY 14, 1973.

HENRY P. SLANE,
President, Peoria Journal Star, Illinois Valley Communications, Inc., 1 News Plaza, Peoria, Ill.

DEAR MR. SLANE: This refers to your request for a tax certificate pursuant to Section 1071 of the Internal Revenue Code (26 U.S.C. Section 1071). The former licensee of WSWT(FM), Peoria, Illinois is Illinois Valley Communications, Inc., a wholly owned subsidiary of The Peoria Journal Star, Inc., publisher of the Peoria Journal Star, the only daily newspaper in Peoria. An application for assignment of license of WSWT(FM) to Mid-America Media, Inc. (BALH-1579) was granted February 15, 1972. You state that the reason for the sale was to break up the newspaper broadcast station combination based on the Commission's Further Notice of Proposed Rulemaking in Docket No. 18110, 22 FCC 2d 339 (1970), which proposed rules limiting a party to one or more daily newspapers, or one TV station or one AM-FM combination in the same market. You argue that, "The adoption of the 'Further Notice' for all practical purposes constitutes a new tentative FCC policy, and that a tax certificate is therefore warranted."

Your request must be denied because it is outside the basic statutory provision which authorizes tax certificates. Section 1071 of the Internal Revenue Code provides in pertinent part as follows: "(a) Nonrecognition of gain or loss—if the sale or exchange of property including stock in a corporation) is certified by the Federal Communications Commission to be necessary or appropriate *to effectuate a change in policy of, or adoption of a new policy by*, the Commission with respect to the ownership and control of radio broadcasting stations, such sale or exchange shall, if the taxpayer so elects, be treated as an involuntary conversion of such property within the meaning of Section 1033." (Emphasis added)

While it is true that our Further Notice does institute an inquiry into the possible adoption of Rules limiting broadcast/newspaper ownership in the same market, this, standing alone, does not constitute a change in policy or an adoption of a new policy. Our Further Notice did not require divestiture of present holdings, impose any requirements on the transfer of present newspaper-broadcasting combinations, or prevent the formation of new newspaper-broadcasting combina-

tions. See for example, *United Broadcasting Inc.* 36 FCC 2d 695 (1972) where we permitted the publisher of a newspaper in Festus, Missouri to acquire control of a broadcast facility in the same city. Our ruling here is therefore analagous to and consistent with our earlier decision denying RKO General's request for a declaratory ruling that tax certificates would be issued for separating commonly owned AM and FM facilities in the same market. 36 FCC 2d 123 (1972).

While separation of ownership of AM and FM stations in the same market and of newspapers and broadcasting stations in the same market contributes to diversification of control over media of mass communications, in neither case has there been a change in the Commission's present policies which permit such combinations.

Your request for a tax certificate is hereby denied.

Commissioner Johnson concurring in the result. Commissioner Reid absent.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

109-031—73——6

BEFORE THE F.C.C. 73-259

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In Re Application of
INDEPENDENT MUSIC BROADCASTERS, INC.
(WYOR), CORAL GABLES, FLA.
Has: 105.1, #286; 160 kW; 190 ft.
Req.: 105.1, #286; 100 kW(H); 100 kW(V); 904 ft.
For Construction Permit

MEMORANDUM OPINION AND ORDER

(Adopted March 7, 1973; Released March 9, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT; COMMISSIONER WILEY CONCURRING IN THE RESULT.

1. The Commission has for consideration the captioned application for a construction permit for an existing station to change transmitter site and facilities, and a request for waiver of section 73.213(f)(1) of the Commission's rules for acceptance of the application.

2. The transmitting site proposed, approximately 20.5 miles northeast of the present site, would create a short-spacing of 11.7 miles with station WEAT-FM, West Palm Beach, Florida.

3. In support of the request for waiver, WYOR alleges that (1) the area and population within the 1 mV/m contour would be increased by 1,997 square miles and 448,637 persons, respectively; (2) the present low height of the WYOR antenna has resulted in numerous pockets of sub-standard reception which can be eliminated by use of a high antenna; (3) although no "antenna farm" has been established, the fact that there are tall towers at the site constitutes a *de facto* "antenna farm"; (4) more than equivalent protection would be afforded to WEAT-FM; (5) airspace requirements in the area seriously affect selection of a suitable transmitter site and limit coverage; (6) severe limited coverage areas will result to those area stations which cannot use tall towers at the proposed site; and (7) for WYOR to maintain its competitive viability with other area stations it must increase its antenna height.

4. It is recognized that a higher antenna would help eliminate shadowing and sub-standard reception areas; however, it has not been demonstrated that the only site to which the antenna for WYOR, a station licensed to Coral Gables, a community south and southwest of Miami, can be moved is one approximately 20.5 miles from its present site, and well to the north of Miami. Furthermore, WYOR does not claim that its present service to Coral Gables is substandard. Although data presented with the application indicates that no substantial increase in height can be achieved at the present site because

of zoning considerations, other data also in the application would indicate that the FAA might not object to a tower not over 549 feet above mean sea level in a 17-mile semi-circle south of the present WYOR site.[1]

5. Although equivalent protection is not ordinarily acceptable as a justification for a sub-standard spacing, our rules do provide an exception when the antenna is proposed to be located in a specified "antenna farm" at short-spacing, and no reasonable alternative is available because of aeronautical hazard problems [section 73.209(c)]. In adopting this rule, however, the Commission emphasized its intention to maintain mileage separation requirements, and to allow short-spaced assignments only ". . . if extraordinary reasons of aeronautical safety indicated that a particular antenna structure should be located within the antenna farm. . . ." Even then, the Commission added, "Such an action will not be considered as a justification for the filing of other requests for short separations." *Antenna Farm Areas*, 8 FCC 2d 559, 566 (1967). Here, not only has the proposed site not been designated as an "antenna farm" under our rules, but, as noted above, there are obviously sites available, including WYOR's present site, which would meet all mileage separations and not raise aeronautical safety problems. Under these circumstances, a grant of the requested waiver, creating a new short-spacing of the magnitude involved would be violative of established allocation principles, and cannot be condoned.

6. The applicant's contentions concerning its competitive position vis-à-vis other stations in the area are not sufficient to justify grant of the requested waiver. The proposed operation would not result in service to unserved or underserved areas, but would duplicate the service areas of six FM stations already located in the Hollywood area. We also note that station WEAT–FM, the station which would become short-spaced by the WYOR move, tried on two occasions to use its WEAT–TV transmitter site for its proposed FM station and thereby create a short-spacing of 5.5 miles with WYOR. Both requests were denied by the Commission.[2] It would appear inconsistent to now permit the station which would have been short-spaced to create a greater short-spacing to the station which previously proposed a lesser short-spacing.

7. WYOR also argues that if it were already short-spaced to WEAT–FM, it could be located at its proposed site with maximum facilities under section 73.213(f)(2)(i) of our rules,[3] and that, therefore, it should not be prevented from moving because it is not presently short-spaced. Under WYOR's theory, no station would have to observe the prescribed mileage separation requirements for second or third adjacent channels. That theory is not consistent with the reasoning underlying section 73.213. The rationale for the exceptions contained therein is that some flexibility had to be allowed stations which

[1] WYOR concedes also that a tower meeting mileage separations could be located in the vicinity of the tower of television station WCIX–TV, channel 6, Miami. This tower is located near Homestead, Florida, south of Coral Gables and is 1,049 feet above mean sea level.

[2] *Gardens Broadcasting Co.*, 7 FCC 2d 555 (1967); 14 FCC 2d 165 (1968).

[3] Section 73.213(f)(2)(1) provides that where the short separation is second or third adjacent channel stations already short-spaced when the FM table of assignments was adopted may operate with maximum facilities regardless of spacing.

were already short-spaced when the Commission adopted its present mileage separation standards. To extend it to include stations simply wishing to improve coverage for competitive or other reasons as suggested by WYOR would essentially destroy the mileage separation standards prescribed by the Commission, and would result ultimately in substantial increases in interference in the FM broadcast service generally. For example, if we were to grant the waiver requested here, it would then follow that WEAT–FM should be allowed the move south previously denied it. The result would be a substantial increase in interference between the two stations over that which now exists.

8. In view of the foregoing, it does not appear that any of the reasons advanced by WYOR are sufficiently compelling to warrant a waiver of the spacing requirements. Since WYOR has failed to allege facts sufficient, if true, to warrant waiver, a hearing on the request is not required. *U.S.* v. *Storer Broadcasting Co.*, 351 U.S. 192, 13 R.R. 2161 (1956).

9. Accordingly, IT IS ORDERED, That the request of Independent Music Broadcasters, Incorporated, for waiver of section 73.213(f)(1) of the Commission's rules IS DENIED, and that the above-captioned application IS RETURNED to the applicant.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-268

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
LIABILITY OF METRO COMMUNICATIONS, INC., LICENSEE OF RADIO STATION KDEO, EL CAJON, CALIF.
For Forfeiture

MEMORANDUM OPINION AND ORDER

(Adopted March 7, 1973; Released March 12, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has under consideration (1) its Notice of Apparent Liability for forfeiture of $3,000 dated April 5, 1972 and (2) licensee's response to the Notice of Apparent Liability dated April 21, 1972.

2. The Notice of Apparent Liability in this proceeding was issued for violation of Section 317 of the Communications Act of 1934, as amended, and Section 73.119 of the Commission's Rules, in that Station KDEO broadcast commercial announcements daily during the period between April 12, 1971 and April 20, 1971 and three times on April 20, 1971 which lacked the required sponsorship identification. A typical text of the announcements read as follows:

PSSHHTT-KABALONK. Welcome aboard . . . this is your bus speaking! TIDDILYUPBINGGING. We're goin' sight-seein'! (SOUNDS OF FAST DOOR CLOSE & STARTING UP) PSSHHT-BLUNK-VAROOOM. And, whadda-we gonna see, y'say? Me! Wearing words of wisdom from bumper to bumper! Like "Every Glendale has a silver lining." Beautiful! An' "Glendale makes the heart grow fonder." Heart! That's me all over! PSSHHTT-VRUMM. Hey, lady! BEEP-BEEP. Somethin' *beautiful* is comin' you way! VROOM. Me!

3. The licensee's response to the Notice of Apparent Liability states that any type of forfeiture is unwarranted for the reasons that (1) the advertisements were received from one of the most reputable of agencies in the business, (2) the word "Glendale" appeared in the commercial announcements and was synonomous with Glendale Federal Savings and Loan Association in southern California and therefore sufficient as sponsor identification, and (3) other media were carrying the same commercials.

4. That the copy was received from a reputable agency and that other broadcasters and other media carried the commercials provide no justification for failure of a licensee to comply with the Communications Act or the Commission's Rules. Each licensee is expected to know and comply with the statute and the Rules. As to the sufficiency of the use of the word "Glendale" in the announcements as a proper identification of sponsorship, the facts and circumstances lead to the conclusion that the word "Glendale" itself was not appropriate identification. The advertising agency submitted the text of the announcements on condi-

tion that no further sponsorship identification be included; in fact, the agency designated the announcements as "teasers" on the submitted texts, which itself denotes intentional insufficient identification, and the station itself, after broadcasting the announcements above specified and after further thought was given by management to the question of sufficiency, caused the text to be supplemented by adding a "tag line" naming the Glendale Federal Savings and Loan as the sponsor. In fact, in response to a Commission inquiry prior to issuance of the Notice of Apparent Liability the licensee stated:

We admit this was an error in judgment on our part in determining that the word "Glendale" by itself was enough to identify the sponsor.

5. Although licensee's response does not expressly urge that the sponsorship identification in this case falls within the exception permitted by Section 73.119(g) of the Commission's Rules [1] by contending that the use of the word "Glendale" was sufficient, licensee appears to be attempting to bring the announcement within the exception. However, Section 73.119(g) clearly is not applicable since the public could not have been aware that a commercial product or service was advertised or that the sponsor's corporation or trade name, or the name of sponsor's product, was even mentioned. It appears that the announcements were intended to arouse curiosity rather than to provide appropriate sponsorship information.

6. The licensee does not deny making the broadcasts described in the Notice of Apparent Liability on the dates and at times therein indicated. Accordingly, we find that in broadcasting these commercial announcements the licensee failed to make the proper announcements of sponsorship as required by Section 317 of the Act and Section 73.119(a) of the Commission's Rules, and we are not persuaded to grant its request for remission of the forfeiture.

7. In view of the foregoing, IT IS ORDERED, That Metro Communications, Inc., licensee of Radio Station KDEO, El Cajon, California FORFEIT to the United States the sum of three thousand dollars ($3,000) for repeatedly failing to abide by the provisions of Section 317 of the Communications Act of 1934, as amended, and Section 73.119(a) of the Commission's Rules. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument drawn to the order of the Treasurer of the United States. Pursuant to Section 504(b) of the Communications Act of 1934, as amended and Section 1.621 of the Commission's Rules, an application for mitigation or remission may be filed within thirty (30) days from the date of receipt of this Memorandum Opinion and Order.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission send a copy of this Memorandum Opinion and Order by Certified Mail—Return Receipt Requested to Metro Communications, Inc., licensee of Radio Station KDEO, El Cajon, California.

By Direction of the Commission.

Ben F. Waple, *Secretary.*

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[1] Section 73.119(g) reads as follows:
"In the case of broadcast matter advertising commercial products or service, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, *when it is clear that the name of the product constitutes a sponsorship identification*, shall be deemed sufficient for the purpose of this Section and only one such announcement need be made at any time during the court of the program." (Emphasis added.)

F.C.C. 73-224

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of PACIFIC BROADCASTING CORP., AGANA, GUAM For Renewal of Licenses of Stations KUAM and KUAM-TV	File No. BR-2933 and File No. BRCT-296

FEBRUARY 27, 1973.

PACIFIC BROADCASTING CORP.,
Stations KUAM, KUAM-FM, and KUAM-TV,
Post Office Box 368,
Agana, Guam

GENTLEMEN: The Commission has under consideration (1) your applications for renewal of the licenses of Radio Station KUAM (File No. BR-2933), and Television Station KUAM-TV (File No. BRCT-296), filed November 3, 1971, and (2) eight Official Notices of Violation issued to you for violations found in the inspections of the AM station on June 20, 1966, March 31, 1970, and April 15, 1972; inspections of the FM station on March 18, 1970 and April 26, 1972; and inspections of the TV station on June 20, 1966, March 23, 1970, and April 15, 1972, and (3) correspondence received from you in regard to these Notices.

The licenses for these three stations were last renewed on January 30, 1969, for regular terms ending February 1, 1972.

I. THE AM STATION

The inspection of this station which occurred on March 31, 1970, during the regular license period, January 30, 1969–February 1, 1972, indicated the following violations of the Communications Act of 1934, as amended, and the Rules of the Commission, among others: [1]

Section 301 of the Act
Installation and operation of auxiliary transmitter without license or other authority.

Section 318 of the Act or Section 73.93(b)
Operating with unlicensed operators in actual charge of the transmitter (10 days).

Section 73.111(a)
Failure to sign operating logs on and off duty (3 days).

Section 73.52(a)
Operating with power consistently below licensed power and permitted tolerance (6 days).

Section 73.55
Percentage of modulation not being at least 85% on peaks of frequent recurrence.

[1] Citations are to the Rules of the Commission unless otherwise indicated.

Section 73.60
Operation with erratic frequency monitor.
73.1201(a)
Failure to announce station identification.
73.114(b)
Failure to sign operating log for entries concerning transmitter inspections (5 days).
73.112(a)(2)(i)
Failure to make entries in program logs showing announcements of sponsorship (30 days).

All of the above-listed violations of Rules found in the 1970 inspection of this station were also found in the 1966 inspection of this station.

Even after action on your renewal application for this station had been deferred in February, 1972, the subsequent inspection of this station in April, 1972 indicated that the following violations, among others, occurred during March and April, 1972:

Section 318 of the Act
Operation by an unlicensed operator.
Section 73.113(a)(3)
Failure to enter transmitter and frequency readings in the operating log (3 days).
Section 73.111(a)
Failure to sign operating logs to indicate the operator on duty (5 days).
Section 73.114(b)
Omission of maintenance log entries to show daily transmitter inspections (5 days).
Section 73.111(a)
Failure to sign on and/or off on program log.
Sections 73.50(b), 73.55, and 73.56(a)
Modulation monitor inaccurate or not adjusted.
Section 73.114(a)(1)(i)
Omission of weekly entries in maintenance logs of readings and calibration of remote and regular ammeters (6 weeks).
Section 73.111(i)
Falsified entries in program logs (3 days).

II. THE FM STATION

The inspection of this station which occurred on March 18, 1970 during the regular license period, January 30, 1969–February 1, 1972, indicated these violations of the Commission's Rules:

Section 73.265(b)
Operation of transmitter by a third-class operator with license not endorsed for broadcast (7 days).
Section 73.281(a)
Failure to sign operating logs on and off duty (9 days). No operating log maintained on one day.
Section 73.283(a)(3)
Omission of entries for half-hour transmitter and frequency monitor readings in operating logs (11 days).
Section 73.282(a)(1)(i)
Omission of all entries in program logs showing programs by name or title, times of commencement, and classifications as to source and type (30 days).

Section 73.283(a)(1)

No entries of time for carrier off (10 days).

After action on renewal of license for this station had been deferred, the inspection of April 26, 1972 of this station indicated that the following violations of the Commission's Rules, among other, occurred in March and April, 1972:

Section 73.281(a)

No signatures in operating logs and program logs to show duty operators (4 days).

Section 73.283(a)(3)

Entries of half-hourly readings omitted from operating logs (3 days).

Section 73.275(a)(4)

Remote control system not functioning to properly perform required functions.

Section 73.282(a)(1)(ii)

Falsification of an entry in the program log (1 day).

III. THE TV STATION

The inspection of this station which occurred on March 23, 1970, during the regular license period, January 30, 1969–February 1, 1972, indicated the following violations of the Commission's Rules:

Section 73.670(a)(1)(ii)

No entries in the program logs showing times that programs terminate (30 days).

Section 73.670(a)(2)(iii)

No entries in program logs showing that appropriate announcements of sponsorship were made (30 days).

Section 73.669(a)

Program logs not signed on or not signed off (10 days).

After action on renewal of license for this station had been deferred, the April 15, 1972 inspection indicated that the following violations of the Communications Act of 1934, as amended, and the Commission's Rules occurred during March and April, 1972:

Section 318 of the Act; Section 73.661

Operator who held no license issued by the Commission was in charge of transmitter.

Section 73.669(a)

No signatures on operating log to show the operator in charge of transmitter.

Section 73.687(b)(7); 73.691(a)

Defective modulation/frequency monitor.

The 1966 inspection of this station indicates that the principal violations involved omission of entries and signatures in the program and operating logs for substantial periods of time, and, even more importantly, operation of the station with unlicensed or improperly licensed operators in charge of the transmitter during the majority of the time that the transmitter was operated.

In addition, the 1972 inspection of the AM station revealed that the operating logs for the AM station were falsified during parts of the

following days in 1972: March 11–12, 18–19, 22–23, 23–24, 25–26, 26–27, 27–28, 30–31, and April 1–2, 3–4, 4–5.

The 1972 inspection of the FM station revealed that the operating logs of the FM station were falsified during parts of the following days in 1972: March 2–3, 3–4, 6–7, 7–8, 10–11, 11–12, 14–15, 15–16, and 17–18, and April 12–13.

The 1972 inspection of the TV station revealed that the operating logs of the TV station were falsified during parts of the following days: March 17–18, 18–19, 19–20, 20–21, 21–22, 22–23, and April 1–2, 2–3, 6–7, and 7–8.

A review of your replies to the Notices of Violation issued in 1966, 1970 and 1972 in the case of the AM and TV stations and in 1970 and 1972 in the case of the FM station reveals that many violations were found to have been repeated after your receipt of prior notice of violation, and that in many instances you took corrective action only after violations were revealed during inspections. You have responded to a number of violation notices by alleging the difficulty of obtaining qualified operators and of complying with the Rules. However, the seriousness of the violations, the large number discovered, the fact that they have been found in repeated inspections and the fact that some appear to have been willful indicate a continuing pattern of failure on your part to comply with the provisions of the Communications Act and the Rules.

In view of the foregoing, the Commission has been unable to determine that the renewal of the licenses for KUAM, KUAM–FM, and KUAM–TV for a full three year term would serve the public interest, convenience, and necessity. In order to provide an earlier opportunity for review of the operations of these stations, it is, therefore, granting renewal of the licenses for KUAM, KUAM–FM, and KUAM–TV for a term ending February 1, 1974. During that term, the Commission expects that the licensee will take all necessary measures to preclude recurrence of the conditions noted herein.

Commissioner Johnson concurring in the result.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
RADIO STATION WFAI, FAYETTEVILLE, N.C.
Concerning Personal Attack Re National
Association of Government Employees

FEBRUARY 22, 1973.

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES and Mr. KENNETH T. LYONS,
c/o Mr. James vanR. Springer, 800 Federal Bar Building West, Washington, D.C.

GENTLEMEN: This letter will refer to the November 16, 1972 complaint filed by you against Radio Station WFAI, Fayetteville, North Carolina.

You allege that a personal attack occurred during the presentation of a controversial issue of public importance and the licensee failed to make "an offer of a reasonable opportunity to respond within a reasonable time"; that prior to the union representation election of November 1, 1972, at Fort Bragg, North Carolina between the National Association of Government Employees (NAGE), and the incumbent union, the American Federation of Government Employees (AFGE), WFAI broadcast certain ads paid for by AFGE which attacked the honesty, integrity and like personal qualities of NAGE and its President, Kenneth T. Lyons; and that the advertisements, which were broadcast hourly between 7 p.m. and 12 p.m. on October 31, 1972, once between 4 a.m. and 5 a.m., and twice between 6 a.m. and 7 a.m. on November 1, 1972, stated the following:

> Kenneth T. Lyons, President of the National Association of Government Employees, whose union is attempting to represent the non-appropriated funds employees at Fort Bragg, was accused by national syndicated columnist Jack Anderson of having Mafia contacts. Kenneth Lyons is also being investigated for misuse of Union funds according to Jack Anderson's column in the Tuesday Fayetteville Observer. The AFGE urges all Fort Bragg employees to read Jack Anderson's column in the Fayetteville Observer on page 4a. Now that you know the truth . . . vote for honesty, and integrity . . . vote AFGE AFL–CIO. Paid for by the American Federation of Government Employees.

You further state that Mr. Harry Breen, Vice-President of NAGE, heard the 8 p.m. October 31 ad and called the station to request the purchase of time to rebut the AFGE charges before the election the following day (November 1); that the station employee who took the call, after conferring with the station manager, Mr. Howard Wilcox, by telephone, told Mr. Breen that the requested time would not be made available, but that Mr. Wilcox would discuss the matter the following day at 9:00 a.m.; that although Mr. Breen knew that it would be impossible to rebut the ads on the day of the election, he and Mr.

Ronald Hogge met with Mr. Wilcox at the agreed time; that at the meeting Mr. Wilcox stated it was the station's policy not to accept advertising after the close of business at 5 p.m., and since Mr. Breen's request came at 8 p.m. no time could have been sold; and that on November 3, 1972, NAGE and Mr. Lyons received a letter from WFAI which acknowledged a personal attack had occurred and offered to provide the parties an opportunity to respond. You further contend that the station willfully ignored Mr. Breen's request, inasmuch as it was aware that the AFGE ads were a direct result of Jack Anderson's column of October 31, 1972 in the Fayetteville Observer.

The station responded to a November 20, 1972 Commission inquiry on November 28, 1972, stating that it was "doubtful" whether the Union election at Fort Bragg was a controversial issue of public importance or for that matter whether the character of Mr. Lyons was of public importance in Fayetteville, North Carolina and the surrounding area; that the election was not a political election which involved the city electorate but merely union members at Fort Bragg, which amounted to only a small percentage of the station's potential listening audience; that the controversy was a private one between competing unions and, although admittedly of utmost importance to the respective unions and Mr. Lyons, it was not a controversial issue of public importance in the surrounding community; that notwithstanding this determination, the station was advised by counsel that the content of the ads might be considered a personal attack under Commission policy; and that this resulted in Mr. Lyons being notified that free time would be made available for a response.

You replied stating that the Union election was not a private dispute; that a personal "attack on the honesty, character and integrity of a major national labor organization in contest with another national labor organization for representation of a large group of employees" is a controversial issue of public importance; and that the station acted unreasonably in regard to the personal attack by failing to recognize the urgency of the matter and by denying Mr. Breen an opportunity to respond on the evening of the personal attack.

Before either the fairness doctrine or the personal attack rules are applicable to broadcast matters, it must first be determined whether a controversial issue of public importance is involved. Such determination initially is that of the licensee, who is called upon to make judgments as to what constitutes controversial issues of public importance and which ones to broadcast. The information before the Commission indicates that the licensee was confused somewhat in determining whether the alleged personal attack was made during the discussion of a controversial issue of public importance. This is evidenced by a November 1 letter offering Mr. Lyons time to respond "according to FCC regulations and WFAI station broadcast policy governing personal attack," and a November 28 response to the Commission which denies the existence of a controversial issue. However, the licensee states that the initial offer of time was a precautionary measure suggested by its attorneys who believed the ad was a "borderline case."

It appears that the election involved only 1230 employees in the

area served by WFAI, which had a 1970 population of some 212,000.[1] In addition you have submitted no information which would enable us to conclude that the issues surrounding the election were of such importance that the general public was concerned or affected by the outcome thereof. See *Dorothy Healy* vs *F.C.C.*, —— U.S. App. D.C. ——, 460 F.2d 917 (1972). Based upon the information before us, we cannot find that the station acted unreasonably in its decision that the union representation election was not a controversial issue of public importance in the station's listening area.[2]

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

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[1] According to the 1970 Census Fayetteville had a population of 161,775 and Cumberland County, in which Fayetteville is located, had a population of 212,042.

[2] Regarding the station's actions of October 31 in connection with Mr. Breen's request, the attached letter has been sent to the licensee.

F.C.C. 73-215

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
PROGRAM-LENGTH COMMERCIALS

FEBRUARY 22, 1973.

THE COMMISSION BY COMMISSIONERS BURCH (CHAIRMAN), ROBERT E. LEE, JOHNSON, REID, WILEY AND HOOKS WITH COMMISSIONER H. REX LEE CONCURRING IN THE RESULT, ISSUED THE FOLLOWING PUBLIC NOTICE:

PROGRAM-LENGTH COMMERCIALS

The Commission has issued several rulings concerning programs that interweave program content so closely with the commercial message that the entire program must be considered commercial.[1] (Although the decisions to date have dealt with "program-length" commercials, the policy expressed and the rulings described here can be equally applied to segments of programs.)

Program-length commercials raise three basic problems. Of primary concern is that such programs may exhibit a pattern of subordinating programming in the public interest to programming in the interest of salability. In addition, a program-length commercial is almost always inconsistent with the licensee's representations to the Commission as to the maximum amount of commercial matter that will be broadcast in a given clock hour. Finally, there are usually logging violations involved. For example, the entries in the logs may show a total of six minutes of commercial matter during a half-hour program, when the entire 30 minutes should have been logged as a commercial.

Some examples of program-length commercials are set out below. However, the examples are by no means all-inclusive, and licensees should not conclude that the fact that a program employs a different format will necessarily cause it to comply with Commission policies and rules. The licensee is expected to exercise its judgment in this area of its broadcast material as it does in all other areas of programming.

Example 1.—A half-hour program is sponsored by a real estate developer. The program primarily shows views of the developer's latest venture, including its golf course, yacht club, marina, beach, and road and housing construction. The narration emphasizes the desirability of owning real estate generally and the

[1] These rulings include: *Topper Corporation*, 21 FCC 148 (1969); *American Broadcasting Companies, Inc.*, 23 FCC 2d 132 (1970); *American Broadcasting Companies, Inc.*, 23 FCC 2d 134 (1970); *Columbus Broadcasting Company, Inc. (WRBL–TV)*, 25 FCC 2d 56, 18 RR 2d 684 (1970); *Multimedia, Inc. (WBIR–TV)*, 25 FCC 2d 59, 18 RR 2d 687 (1970); *KCOP–TV, Inc.*, 24 FCC 2d 149, 19 RR 2d 607 (1970); *Dena Pictures, Inc.*, 31 FCC 2d 206 (1971); *National Broadcasting Company*, 29 FCC 2d 67, 21 RR 2d 593 (1971); *WUAB, Inc.*, 37 FCC 2d 748, 26 RR 2d 137 (1972); and *WFIL, Inc.*, 38 FCC 2d 411, 25 RR 2d 1027 (1972).

desirability of buying real estate at the sponsor's development specifically. The narration also points out the desirability of the location in terms of nearby recreation areas, other facilities, access to highways and projected economic growth in the area. The narrator states that he has purchased land at the development and urges viewers to do the same. The entire program is commercial matter. See *Columbus Broadcasting Company, Inc.* (*WRBL–TV*), cited above in the footnote.

Example 2.—A record producer sponsors a 15-minute program in which listeners are asked to identify various compositions, all of which are contained on a record currently being distributed by the producer/sponsor. None of the compositions is played in its entirety and the excerpts vary from 35 seconds to 1 minute, 45 seconds. At the end of each excerpt the name of the composition and its composer is given. No other information is given or comments made. The record is advertised in three formal commercial announcements totaling 3½ minutes. The entire 15-minute program is commercial. See *KCOP–TV, Inc.*, cited in the footnote, above.

Example 3.—An association of dealers in lawn and garden supplies sponsors a program on gardening and lawn care. Throughout the program there are both formal commercials and informal plugs for various fertilizers, potting soils, pesticides and implements all of which are sold by association members. The dealers' association and the dealers themselves are also plugged. During demonstrations of gardening or lawn care techniques, various products sold by the dealers are used, promoted and prominently displayed. The program is entirely commercial.

In the past, the broadcast of such programs has resulted in issuance of letters of admonition and/or relatively small forfeitures based on the logging violation aspect of the cases. However, the Commission continues to receive evidence that some stations still are broadcasting programs which, because of the interweaving of "entertainment" or "informational" content with promotion of the advertisers' products, are program-length commercials.

This constitutes a reminder that the Commission considers the broadcast of such programs to involve a serious dereliction of duty on the part of the licensee, and a notice to all licensees that the Commission intends in the future to consider imposition of sanctions which it believes will be more effective in bringing about a discontinuance of the practice.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
ROBERT H. HAUSLEIN, CORTLAND, N.Y.
Concerning Reasonable Access in Political
Broadcast (Section 312(a)) Re Station
WHEN-TV, Syracuse, N.Y.

FEBRUARY 21, 1973.

Mr. ROBERT H. HAUSLEIN,
R.D. 4
Cortland, N.Y.

DEAR MR. HAUSLEIN: This is in response to your complaint of January 2, 1973, against Television Station WHEN-TV, Syracuse, New York. Your previous letter to the Commission of October 10, 1972 was answered by reply dated November 10, 1972.

In your letter of October 10, you stated that Station WHEN-TV had refused to sell the 7:30–8:00 p.m. time slot on that date to the McGovern for President Committee for the broadcast of a political campaign message by Senator McGovern, and that the station was not willing to make an alternative time slot available. You maintained that the station had thereby failed "in discharging its public service responsibilities" and requested the Commission to investigate the matter.

In the Commission's letter of response, you were informed that although under the Communications Act, as amended, the Commission is authorized to revoke any station license or construction permit for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy, no complaint had been received from Senator McGovern or his staff regarding WHEN-TV's refusal to sell time for the broadcast of the message in question.

In your letter of January 2, 1973, you again assert that in refusing to sell time for the broadcast of Senator McGovern's October 10 campaign message, Station WHEN-TV failed to comply with its obligation to allow candidates for Federal elective office "reasonable access" to its facilities on behalf of their candidacies, and contend that "it (is) immaterial that the Senator or his staff did not register a formal complaint." You have requested that the Commission advise you as to what action will be taken on your complaint.

Section 312(a) of the Communications Act of 1934, as amended, states in relevant part:

(a) The Commission may revoke any station license or construction permit—
(7) For willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcast station by

a legally qualified candidate for Federal elective office on behalf of his candidacy.

Your complaint seeks to invoke these provisions against WHEN–TV although neither Senator McGovern nor his campaign staff has filed a protest with the Commission regarding any refusal by the station to sell time for the broadcast of the Senator's talk.

The "reasonable access" provision of Section 312(a) (7) applies only to requests for the use of a station made by legally qualified candidates for Federal elective office. Absent a specific complaint from such candidate or his campaign staff concerning refusal of such request, we do not believe that Commission action is warranted. See Public Notice of March 16, 1972, "Use of Broadcast and Cablecast Facilities by Candidates for Public Office", 37 Fed. Reg. 5804–5805. Both the legislative history and underlying policy of the Federal Elections Campaign Act of 1971, which added the section in question to the Communications Act, support this position. The section on its face establishes obligations and rights of reasonable access only as between station licensees and candidates for Federal elective office. As Senator Pastore, one of the sponsors of the bill ultimately enacted as the 1971 Act, stated with respect to the purpose of the legislation:

> It attempts to give candidates for public office greater access to the media so that they may better explain their stand on the issues, and thereby more fully and completely inform the voters. 117 CONG. REC. S12872 (daily ed. Aug. 2, 1971).

This statement was incorporated verbatim in the Senate Commerce Committee's Report on the proposed Federal Elections Campaign Act. S. Rep. No. 96, 92d Cong., 1st Sess., p. 20 (1971). There was no indication by Congress of any intent to accord any right to other persons to demand the broadcast of a particular candidate's message or announcement. Rather, the right to reasonable access was made personal to the candidate. Nor is it simply a question of consideration by the Commission of a possible violation of law which may be raised as adequately by a member of the general public as by the candidate himself. As the Senate Committee on Commerce stated in its report:

> . . . complete freedom is being given to the broadcaster and candidates to develop specific program formats for the appearance of the candidates . . . Whatever is done, should be done as a result of discussion, negotiations, and cooperation between the candidates and the broadcasters. S. Rep. No. 96, 92d Cong., 1st Sess., p. 26 (1971).

Only the candidate (or his campaign manager or similar spokesman) and the station are in a position to know the background of any situation in which a particular request for time appears to have been rejected. In view of this consideration, we do not believe that the requirement for access can be properly administered on a basis other than on complaint by the candidate himself, who is the only one in a position to substantiate a claim that access has been improperly denied. For these reasons, it does not appear that further action on your complaint is warranted.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission,

Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY, *Chief,*
Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 73R-99

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of ST. CROSS BROADCASTING, INC., SANTA CRUZ, CALIF. JAMES B. FENTON, GRANT R. WRATHALL, JR., LAWRENCE M. WRATHALL AND LORETTA WRATHALL, D.B.A. PROGRESSIVE BROADCASTING CO., APTOS-CAPITOLA, CALIF. For Construction Permits	Docket No. 19503 File No. BP-18014 Docket No. 19506 File No. BP-18221

MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1973; Released March 8, 1973)

BY THE REVIEW BOARD:

1. Before the Review Board is a motion, filed June 19, 1972, by Progressive Broadcasting Company (Progressive), requesting waiver of Section 1.229 of the Rules and the addition of a *Suburban* issue against St. Cross Broadcasting, Inc. (St. Cross).[1] The petition was not filed within the time limit specified by Section 1.229(b) of the Rules, and the Board does not find that Progressive has established good cause for the untimeliness.[2] However, the motion does raise serious public interest questions and the likelihood of proving the allegations contained therein is sufficient to meet the test set forth in *The Edgefield-Saluda Radio Co.* (*WJES*), 5 FCC 2d 148, 8 RR 2d 611 (1966). The Board will accordingly entertain Progressive's motion on its merits.

2. In its motion, Progressive alleges that the ascertainment efforts of St. Cross are defective, in that St. Cross principals did not conduct the surveys, the surveys were not of community leaders, certain community groups were excluded from the survey, the St. Cross demographic study was submitted after the surveys and the list of ascertainment needs submitted by St. Cross did not reflect its surveys. St. Cross opposes the motion and contests each allegation. The Broadcast Bureau acknowledges that there are deficiencies in St. Cross' *Suburban* showing, but opposes the motion on the ground that the deficiencies are not so great as to warrant specification of an issue.

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[1] Also before the Board are: (a) opposition, filed July 5, 1972, by the Broadcast Bureau; (b) reply opposing motion [opposition], filed July 5, 1972, by St. Cross; (c) reply, filed July 13, 1972, by Progressive; (d) a letter, received July 14, 1972, from Progressive; (e) a letter, received July 14, 1972, from St. Cross; and (f) clarification of paragraph 6 of (c), filed July 14, 1972, by Progressive.

[2] In support of its claim for good cause, Progressive states that it discovered evidence supporting its motion while preparing an opposition to a St. Cross motion to enlarge issues against Progressive and that the burden of preparing that opposition prevented earlier completion and filing of its own motion.

3. The Board will add the requested issue. In general, the pleadings raise a substantial question as to the adequacy of St. Cross' ascertainment efforts pursuant to the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). First, it is not clear whether principals, management-level employees or prospective management-level employees have consulted with leaders of significant groups in the community in order to ascertain community problems, needs and interests.[3] With regard to the December, 1967, and February, 1969, surveys, it appears that they may have been directed solely to and resulted solely in ascertainment of programming interests and format preferences. See paragraph 17 of the *Report and Order* adopting the *Primer*, *supra*. *Cf. Estate of John C. Mullins*, 36 FCC 2d 78, 25 RR 2d 73 (1972). With respect to the September, 1969, survey, it is unclear whether it was conducted by a principal, management-level employee or prospective management-level employee. See Q. & A. 11(b) of the *Primer*, *supra*. *Cf. Childress Broadcasting Corp. of West Jefferson* (*WKSK*), 37 FCC 2d 766, 25 RR 2d 711 (1972). While the August, 1970, survey apparently was conducted by a principal, it has not been established that it was of community leaders rather than of the general public. See Q. & A. 4 of the *Primer*, *supra*. Mere membership in a profession, involvement in education, business or agriculture; or employment in government or social service do not automatically make an individual a "community leader". An applicant must make at least a minimal showing that either the interviewee is a leader of that group or organization of which he is a member, or that he, by virtue of his position or otherwise, should be considered a leader of some other portion of the community or of the community as a whole.[4] Thus, it must be resolved at the hearing whether St. Cross has shown that a dialogue has been established and will be maintained between the community and the decision-making personnel of the applicant. *WPIX, Inc.* (*WPIX*), 34 FCC 2d 419, 422, 24 RR 2d 59, 63 (1972), review denied FCC 72–616 (1972).[5]

4. Also, St. Cross does not appear to have contacted leaders of all significant groups in the community and this raises additional questions as to the adequacy of the survey. See paragraph 44 of the *Report and Order* and Q. & A. 16 of the *Primer*, *supra*. St. Cross reveals in its demographic study (see note 3, *supra*) that 5% of the population within its proposed 0.5 mv/m contour is Oriental; yet it appears to have made no effort at all to ascertain the needs of this group by consulting with its leaders.[6] Progressive raises this question, as well, with regard to the Mexican-American minority (8%–9%) within this area. Moreover, we find persuasive Progressive's contentions that St. Cross, in

[3] Results of its surveys were filed by St. Cross with the Commission on December 14, 1967; February 25, 1969; September 29, 1969; and August 3, 1970. On December 17, 1971, a description of the three counties contained within its proposed 0.5 mv/m contour, a "recapping" of ascertained needs, and programming proposals were filed by St. Cross.

[4] We also note that St. Cross has not interviewed a single member of the government of Santa Cruz City, its prospective community of license.

[5] The public policy underlying the requirement that consultation with community leaders must be done by means of a person-to-person dialogue between them and the decision-making personnel of the applicant has been articulated by the Commission in paragraph 33 of the *Report and Order*, *supra*. See also *Fisher's Blend Station, Inc.*, 30 FCC 2d 37, 21 RR 2d 1220 (1971), clarified 30 FCC 2d 705, 22 RR 2d 385 (1971), reconsideration denied 31 FCC 2d 148, 22 RR 2d 684 (1971).

[6] Absent an adequate description of the specific community of license (see paragraph 5, *infra*), we will assume that it reflects the population characteristics given for the counties.

some instances, contacted only individuals who work with or have knowledge of certain groups (*e.g.*, farm laborers) rather than leaders of those groups themselves. A question exists, too, whether St. Cross has consulted with the "rank and file" of certain groups, construing "representative", as used in the heading of paragraph 44 of the *Report and Order*, *supra*, to mean "sample" rather than "leader" or "spokesman". Paragraph 38 of the *Report and Order* explains that such an interpretation and procedure is improper. Also see *Qunnipiac Valley Service, Inc.*, FCC 73–174, —— FCC 2d ——, released February 23, 1973.

5. Finally, the demographic study submitted by St. Cross (see note 3, *supra*), too, appears to be insufficient. The major function of such a study, regardless of when it is filed, is to indicate to the Commission the composition of the community, so that the Commission can intelligently evaluate the sufficiency of the applicant's ascertainment efforts. See *WPIX, Inc.* (*WPIX*), *supra*. The necessity for such information is obvious in this proceeding. The very general description of the proposed 0.5 mv/m service area does not appear to comply with Q. & A. 9 of the *Primer* and, thus, prevents a satisfactory conclusion with regard to St. Cross' *Suburban* showing. *William R. Gaston*, 35 FCC 2d 624, 24 RR 2d 779 (1972). Moreover, the "recapping" of ascertained needs presented by St. Cross appears to be more closely attuned to the demographic study than to the interviews St. Cross has reported.[7] In sum, sufficient questions have been raised regarding St. Cross' showing to convince us that an issue is necessary to determine the efforts undertaken by St. Cross to ascertain the needs of its specified community and whether it proposes programming designed to help meet those ascertained needs.

6. Accordingly, IT IS ORDERED, That the motion for waiver of Section 1.229 and motion to enlarge issues, filed June 19, 1972, by Progressive Broadcasting Company, IS GRANTED; and that the issues in this proceeding ARE ENLARGED to include the following:

To determine the efforts made by St. Cross Broadcasting, Inc. to ascertain the community needs and interests of the area to be served and the means by which it proposes to meet those needs and interests; and

7. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence and proof under the issue added herein SHALL BE on St. Cross Broadcasting, Inc.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[7] While the needs of military personnel are noted in the "recap" and appropriate programming proposed, nowhere in any survey are contained interviews with members of that group or even mention of the military by other interviewees. We also have found no mention in the interviews of the exodus of young adults due to lack of employment opportunities, of the endangered species that exist in the area, or of the tourist influx during the summer months.

F.C.C. 73-214

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of Logging
COMMERCIAL ANNOUNCEMENTS BY TAFT BROADCASTING CO., STATIONS WDAF-AM AND TV, CINCINNATI, OHIO

FEBRUARY 21, 1973.

TAFT BROADCASTING CO.,
Licensee of Stations WDAF and WDAF-TV,
1906 Highland Avenue,
Cincinnati, Ohio

GENTLEMEN: This is in reference to the "Jack of All Trades" program broadcast on Station WDAF and the "Let's Get Growing" program broadcast on Station WDAF-TV, Kansas City, Missouri.

The host of each program is John Paul "Jack" Tobin. Tobin is a full-time commission salesman for the Gordon Corporation, a manufacturer and wholesaler of agrichemicals, including fertilizers and pesticides designed for use by homeowners. The "Jack of All Trades" program is broadcast every week night from 9:05 to 10:00 and uses a call-in format in which listeners ask questions about home maintenance or lawn and garden problems. Tobin and his guests answer the questions. The program has no overall sponsor, but Station WDAF sells commercial announcements for use on the program. The Gordon Corporation is a regular advertiser, purchasing at least one 60-second advertisement per program. In addition, Tobin frequently recommends Gordon products in his answers to the questions posed by the callers.

"Let's Get Growing" is a half-hour television program broadcast on 26 Sunday afternoons during the growing season. It deals primarily with lawn and garden problems. Tobin recommends and uses various products and services on this program, including Gordon products, as will be described below.

Prior to May, 1972, neither Station WDAF nor Station WDAF-TV required Tobin to broadcast disclosure of his employment by the Gordon Corporation. Tobin, without being instructed by the station, has occasionally mentioned on the radio program that he was employed by the Gordon Corporation, but not on the television program. Since Tobin sold Gordon products to dealers in lawn and garden supplies in the area, and since he sold on a commission basis, he may be presumed to have benefited from his own plugs of Gordon products over the air.

The Commission has stated that:

> . . . a licensee has an obligation to exercise special diligence to prevent improper use of its radio facilities when it has employees in a position to influence program content who are also engaged in outside activities which may create a

conflict between their private interests and their roles as employees of the station . . .

Crowell-Collier Broadcasting Corporation (*KFWB*), 14 FCC 2d 358, 8 RR 2d 1080 (1966). In other circumstances where conflicts exist between private and public interests, the Commission has held that disclosure of the private interests should have been made, *Gross Telecasting, Inc.*, 14 FCC 2d 239, 13 RR 2d 1067 (1968). See too *National Broadcasting Company*, 14 FCC 2d 713, 14 RR 2d 113 (1968). The stations consider Tobin to be free-lance talent and not an employee. However, Tobin was a frequent performer on both Station WDAF and Station WDAF–TV and management personnel knew of his employment by the Gordon Corporation. While recognizing that the *Crowell-Collier* decision referred to employees, the Commission's conflict of interest policy, as expressed in that case, is applicable in the circumstances presented here. The Commission believes that Tobin's employment as a salesman on the Gordon Corporation should have been disclosed on the programs in question and that the failure to make such a disclosure falls short of the degree of responsibility expected of Commission licensees.

Video tapes of two "Let's Get Growing" programs have been reviewed. A description of the program of April 30, 1972, is as follows. The program begins with the introduction of Jack Tobin by the program's announcer and co-producer, Bill Yearout. Tobin then introduces his guest, Fred Pence, the owner and operator of The Garden Center, Lawrence, Kansas. Pence is a member of the Let's Get Growing Association. Pence appears on the program for the next 7 minutes, 41 seconds, during which he is shown planting flowers in gardens and in flower pots. During his demonstration, plugs are made for Hyphnum peat moss, Ames gardening trowel, Ferite-Lome bed mix for flower beds, and Pot Luck potting soil, totaling 3½ minutes. There follows a 60-second plug for Let's Get Growing dealers; a 2½-minute plug for Ferti-Lome rose food and Two Way Green Power, a 20-second plug for Gordon's Bugit, and 30-second plugs for Wicke's Garden Center, Waldo Grain Company, and Ferti-Life fertilizer. Pence then returns to demonstrate the planting of hanging baskets during which he plugs Sphagnum moss for 1 minute, 36 seconds, and Redi-Earth potting soil for 21 seconds. In the next 91 seconds, plugs are made for Soil Service Garden Center, Toro Motors, Hartman and Sons, Ames tools, Skinner Nursery, Fibrex, Miller Hardware, Flexogen hose, Rainbow Gardens, Two Way Green Power and Preen. The next 4 minutes, 59 seconds are devoted to a film showing a man spraying and feeding roses with Gordon's Fore-Plus fungicide and Ferti-Lome rose food. The products are never absent from the picture. This film is followed by a 60-second plug for Gordon's chickweed killer and a 60-second plug for Greenfield's Two Way Green Power. The program closes after an announcement that John Bell of Bell's Pest Control will be next week's guest.

In this 27-minute program, 21 minutes, 2 seconds promote the sponsor of the program, the Let's Get Growing Association, its members, or the products they sell. The demonstrations and informational content of the program are so intertwined with the promotion of the sponsor, its members, and their products that the entire program must

be considered a commercial announcement, *Columbus Broadcasting Company, Inc.* (*WRBL–TV*), 25 FCC 2d 56, 18 RR 2d 684 (1970), *Multimedia, Inc.*, 25 FCC 2d 59, 18 RR 2d 687 (1970), *KCOP–TV, Inc.*, 24 FCC 2d 149, 19 RR 2d 607 (1970), *WFIL, Inc.* (*WAND–TV*), 38 FCC 2d 411, 25 RR 2d 1027 (1972). Compare *National Broadcasting Company*, 29 FCC 2d 67, 21 RR 2d 593 (1971). It is not necessary to describe here the program of May 7, 1972, although the same conclusion must be reached as to that program.

You have elected, under Section 73.670(a)(2)(ii) of the Commission's Rules, to log the duration of each commercial announcement. Your logs show no commercial time during the "Let's Get Growing" program and the Commission has concurrently issued a Notice of Apparent Liability for failure to log commercial time. However, we are more concerned with two other aspects of these programs. First, they exhibit a subordination of programming of interest to the public to programming in the interests of salability. And second, since you have indicated to the Commission that you will ordinarily present no more than 16 minutes of commercial matter per hour, your actions are inconsistent with your representations to the Commission. Again, the Commission finds that you have fallen short of the degree of responsibility expected of a licensee.

You have stated that after May, 1972, corrective steps were taken to stop the practices cited above. This letter will be associated with the stations' files and will be considered again, along with all other pertinent information, in connection with your next applications for renewal of license of Stations WDAF and WDAF–TV.

Commissioner H. Rex Lee concurring in the result.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 73-265

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
BEN LLOYD TIPTON, III, 6213 CANYON DRIVE, OKLAHOMA CITY, OKLA.
Suspension of Radiotelephone Third Class Operator Permit Endorsed for Broadcast Operation

ORDER

(Adopted March 7, 1973; Released March 12, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT.

1. The Commission has for consideration an Order suspending the Radiotelephone Third Class Operator Permit with Broadcast Endorsement, P3-10-17882, issued to Ben Lloyd Tipton III, and a timely filed request for hearing.

2. IT APPEARING, That on the basis of all of the information gained through an indepth investigation of all of the circumstances surrounding the events leading to the issuance of the suspension Order, and Mr. Tipton's replies thereto, no useful purpose would be served by proceeding with a formal hearing; that on the contrary, the public interest would best be served by an immediate termination of the instant proceeding.

3. Accordingly, IT IS ORDERED, That the suspension Order released August 20, 1970, in the above-captioned proceeding IS DISMISSED, and the instant proceeding IS TERMINATED.

4. IT IS FURTHER ORDERED, That a copy of this Order be sent to the licensee at his last known address of 6213 Canyon Drive, Oklahoma City, Oklahoma, 73105.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73-274

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of WALTON BROADCASTING CO. (WMRE), MONROE, GA. For Renewal of License	Docket No. 19011 File No. BR-2938

MEMORANDUM OPINION AND ORDER

(Adopted March 7, 1973; March 13, 1973)

BY THE COMMISSION: COMMISSIONER REID ABSENT; COMMISSIONER HOOKS DISSENTING.

1. The Commission designated for hearing on a number of issues the application of Walton Broadcasting Company (Walton) for renewal of the license for standard broadcast station WMRE, Monroe, Georgia. FCC 70-1027, released October 2, 1970. The issues designated by the Commission inquire into whether Walton had filed false and misleading information with the Commission, whether Walton or its principals had participated in a strike application, and whether there had been an unauthorized transfer of control of station WMRE. Following the Commission's denial of Walton's petition for reconsideration of the designation order, 28 FCC 2d 111 (1971), the hearing commenced, and testimony was taken in Monroe, Georgia, on June 23-28, 1971. On October 18, 1971, the Administrative Law Judge granted Walton's request for an indefinite continuance of the hearing pending presentation to the Commission of a plan for the disposition of Walton. FCC 71M-1658. Meanwhile, on October 2, 1971, Henry P. Austin, Jr., on the petition of the National Bank of Monroe, was appointed by the Walton County Superior Court as the permanent receiver of the corporate assets of Walton and of the individual assets of Mr. Warren G. Gilpin, a major stockholder and President of Walton and general manager of WMRE. On October 26, 1971, the Commission granted the involuntary assignment of the license for WMRE from Walton to Austin.

2. Austin then filed with the Commission a petition for extraordinary relief in which he sought (1) termination of the hearing on the license renewal application for WMRE; (2) a grant without further hearing of the license renewal; and (3) approval of the assignment of the license for WMRE from Austin to three Monroe, Georgia, residents. Austin based these requests on several contentions. First, he stated that Mr. Gilpin had been found to be mentally ill and incapable of managing his own estate and asserted that severe illness has been recognized by the Commission as a basis for granting exceptions to our general policy of not permitting an assignment of a broadcast license while character issues remain outstanding against

the licensee or its principals.[1] Second, Austin alleged that both Walton and Mr. Gilpin are bankrupt and that only through a sale of WMRE can their innocent creditors recover the sums owed them. Finally, Austin contended that no profit would accrue to Mr. Gilpin if the assignment were approved since any surplus funds from the sale would be paid into an irrevocable trust with the income therefrom going to defray the cost of Mr. Gilpin's hospitalization. The Commission denied Austin's petition, holding that the allegations concerning Mr. Gilpin's health were insufficient to warrant the requested relief, and that in any event, the proposed assignment would result in a significant benefit to an alleged wrongdoer, and so could not be approved. FCC 72–1036, released November 27, 1972.

3. Now before the Commission is a petition filed by Austin seeking reconsideration of our denial of his petition for extraordinary relief.[2] In the petition for reconsideration, Austin requests essentially the same relief as that sought in his petition for extraordinary relief. As support, Austin reiterates his argument that a station assignment may be permitted under the Commission's equitable powers if the licensee's principal is seriously disabled, even if there are unresolved questions concerning the principal's character qualifications. Austin, however, has presented nothing of substance which was not before us when we held that the allegations regarding Mr. Gilpin's health were not sufficient to warrant a termination of the hearing and a grant of the proposed assignment. We therefore shall adhere to this determination particularly since Austin has not shown that completion of the remaining hearing process would in any manner endanger Mr. Gilpin's health. See *Tinker, Inc., supra.*

4. Moreover, and more importantly, it appears that approval of the proposed assignment would result in a significant benefit to Mr. Gilpin. As we stated in our opinion denying Austin's petition for reconsideration, it is the Commission's firmly established policy that an assignment of a broadcast license will not be considered if issues concerning the character qualifications of the licensee or its principals are outstanding and if the proposed assignment would result in a significant benefit to an alleged wrongdoer.[3] Walton's balance sheet attached to Austin's petition shows Walton's total liabilities to be $42,334.66. Thus, after payment of Walton's debts, a substantial portion of the $112,718.52 purchase price would remain for distribution to Mr. Gilpin. This clearly constitutes a significant benefit. While Austin states that the sale proceeds will be used to discharge Gilpin's

[1] Citing *Martin R. Karig*, FCC 64–850, 3 RR 2d 669 (1964), and *Tinker, Inc.*, 8 FCC 2d 22 (1967).

[2] Other pleadings before the Commission are: Oppositions to the petition for reconsideration, filed by the Chief of the Broadcast Bureau and by Community Broadcasting Company on January 9 and 10, 1973, respectively, and a reply to the oppositions filed by Austin on January 22, 1973.

[3] See *Jefferson Radio Co., Inc.* v. *FCC.*, 340 F. 2d 781 (1964); *Tidewater Telcradio*, 24 RR 653 (1962) and *Milton Broadcasting Co.*, 12 FCC 2d 354 (1968). Compare with *Second Thursday Corporation*, 25 FCC 2d 112 (1970), and *Shell Broadcasting, Inc.*, FCC 73–3, released January 8, 1973, where we allowed assignments where it was clear that each proposed assignment would result in either no benefit to alleged malfeasors or merely an insignificant one which was outweighed by the equities in favor of innocent creditors.

debts,[4] we have held that such a use constitutes a significant benefit to an alleged wrongdoer and is therefore impermissible.[5]

5. Austin points out, however, that the contract for the sale of WMRE provides that the Commission may set a lower sales price than that called for by the contract if the Commission should determine that Mr. Gilpin would receive a significant profit from the proposed assignment. Austin suggests that the Commission failed to consider fully this provision when it denied Austin's petition for extraordinary relief. Austin also requests, should the Commission decide that the proposed assignment allows Gilpin an impermissibly large profit, that "a brief negotiating session be effected among all parties, to determine an approvable consideration." We did not fail to consider the provision allowing the Commission to set a lower sales price than that stipulated by the parties. On the contrary, we were fully aware of this provision of the contract, and we rejected its implementation for the same reason that we must deny Austin's request for a negotiating session to set a lower purchase price. We do not believe that it is the proper role of the Commission to participate as a broker or referee in negotiations between private parties except as required by our statutory duty to protect the public interest. We think this is particularly so in this case where our role would essentially be that of an inverse auctioneer, which role we, of course, must reject. Our duty, as we see it, is to determine whether the proposal which Austin has set forth complies with our rules and policy. Since it seems clear that it does not, we cannot approve it, absent resolution of the presently outstanding character issues.

6. Accordingly, IT IS ORDERED, That the Petition for Reconsideration filed by Henry P. Austin, Jr. on December 27, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

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[4] Mr. Gilpin's debts, according to the balance sheet submitted by Austin, amount to $95,084.29. Austin, in his petition for reconsideration, states that Walton's and Mr. Gilpin's combined liabilities total $102,718.52. However, it is unclear how this latter figure was derived.

[5] See *Capital City Communications, Inc.*, 33 FCC 2d 703, reconsideration denied, 34 FCC 2d 685 (1972).

F.C.C. 73R-100

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WESTERN COMMUNICATIONS, INC. (KORK-TV), LAS VEGAS, NEV. For Renewal of License	Docket No. 19519 File No. BRCT-327
LAS VEGAS VALLEY BROADCASTING CO., LAS VEGAS, NEV. For Construction Permit for New Television Broadcast Station	Docket No. 19581 File No. BPCT-4465

MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1973; Released March 9, 1973)

BY THE REVIEW BOARD: BOARD MEMBER KESSLER DISSENTING WITH RESPECT TO THE NETWORK AVAILABILITY ISSUE.

1. Western Communications, Inc.'s (Western) application for renewal of license for Television Station KORK-TV, Las Vegas, Nevada was designated for hearing by Commission Order FCC 72-503, released June 12, 1972, 37 FR 121, to determine whether it had engaged in certain fraudulent billing practices. There was also pending at that time a mutually exclusive application for a new television station, filed by Las Vegas Valley Broadcasting Company (Valley). The Commission, by Order FCC 72-767, released September 1, 1972, 37 FR 184, redesignated Western's application and Valley's application for consolidated hearing on the issues previously designated as to Western and on a standard comparative issue. Western has now filed a motion to enlarge the issues as follows:[1]

1. To determine whether a loan commitment from the Nevada State Bank has been withdrawn and, if so, whether Las Vegas Valley Broadcasting Co. (a) is financially qualified, (b) has misrepresented facts to the Commission concerning the existence of the loan commitment, and (c) failed to comply with Section 1.65 of the Commission's Rules by not reporting the withdrawal of the loan commitment;

2. To determine whether Las Vegas Valley Broadcasting Co. will be able to obtain, or has reasonable expectations of being able to obtain, an NBC network affiliation as proposed in its application, and, if not, whether Las Vegas Valley Broadcasting Co. (a) has misrepresented facts to the Commission concerning the existence of an affiliation agreement with the NBC Television Network, (b) can effectuate its program proposals, and (c) is financially qualified;

3. To determine the facts and circumstances surrounding the criminal convictions of Sam Cohen, a Director and subscriber to at least 10% of the stock of Las Vegas Valley Broadcasting Co., for violation of the Internal Revenue Code by filing a false wagering excise tax return (26 U.S.C. § 7207) and for bookmaking,

[1] The motion was filed on October 6, 1972. Las Vegas Valley Broadcasting Co. filed its opposition November 27. The Broadcast Bureau filed comments on November 24, 1972 and Western filed its reply December 22, 1972. On February 28, 1973, Las Vegas filed a motion for leave to file a response, which will be denied, *infra*, and a response to reply which will be dismissed.

in violation of the California gambling laws, whether Las Vegas Valley Broadcasting Co., should have informed the Commission of such facts and circumstances, and whether Las Vegas Valley Broadcasting Co. is legally qualified to be a licensee;

4. To determine with respect to Las Vegas Valley Broadcasting Co.:

a. whether, if the loan commitment it relies on from the Nevada State Bank has not been withdrawn, Las Vegas Valley Broadcasting Co. is able to meet the terms and conditions of the proposed loan;

b. whether stock subscribers Harry E. Fightlin, Aaron S. Gold, Addeliar D. Guy, Eugene L. Kirshbaum, James B. and Marie E. McMillan, James E. Rogers, Elizabeth W. Scott, and Clark Henry Tester are financially qualified to meet their respective stock subscription commitments;

c. to what extent Las Vegas Valley Broadcasting Co. proposes to rely on credit from RCA;

d. whether the estimated revenues are reasonable in light of the absence of an NBC affiliation agreement and any reasonable expectation of such an affiliation;

e. whether the estimated costs of construction and operation are reasonable, in view of the omission of substantial items of expense and the absence of an NBC affiliation and any reasonable expectation of such an affiliation;

f. whether, in view of the evidence adduced pursuant to this issue and pursuant to issues 1, 2, 5 and 6, Las Vegas Valley Broadcasting Co. is financially qualified to construct, own and operate the proposed television broadcast station;

5. To determine whether Las Vegas Valley Broadcasting Co., has proposed adequate studio and office facilities, and, if not, whether it can effectuate its proposal;

6. To determine with respect to the transmitter site proposed by Las Vegas Valley Broadcasting Co.:

a. whether the necessary rights of access to the site can be obtained and, if so, on what terms and conditions;

b. whether the site is suitable for use as proposed;

7. To determine whether the plans, if any, which Las Vegas Valley Broadcasting Co. has made to comply with the Commission's equal employment opportunity requirements are in fact adequate to comply with those requirements;

or, if the foregoing issue is not designated,

To determine on a comparative basis the significant differences between the applicants with respect to the plans made by each applicant to comply with the Commission's equal employment opportunity requirements;

8. To determine whether Las Vegas Broadcasting Co. has failed to maintain its local public file in compliance with Section 1.526 of the Commission's Rules;

9. To determine whether Las Vegas Valley Broadcasting Co. has violated Section 1.513(b) of the Commission's Rules in connection with an amendment to its application that was filed October 26, 1971;

10. To determine whether Las Vegas Valley Broadcasting Co. has demonstrated such ineptness and/or failures to comply with Sections 1.514 and 1.65 of the Commission's Rules as to warrant disqualification of Las Vegas Valley Broadcasting Co. to be a licensee of the Commission;

11. To determine whether in light of the evidence adduced under the preceding issues, Las Vegas Valley Broadcasting Co. is qualified to be a licensee of the Commission;

12. To determine in the event that it is concluded that Las Vegas Valley Broadcasting Co. is not disqualified to be a licensee of the Commission, what impact, if any, the evidence adduced under the preceding issues would have upon its comparative evaluation.

ISSUES WITH RESPECT TO VALLEY'S LOAN COMMITMENT

2. Valley proposes to rely to a substantial extent on a one million dollar loan from the Nevada State Bank. Western contends that this commitment has been withdrawn and that Valley has been so advised by the Bank. In support of this contention, Western submits

an affidavit from Mr. Fred W. Smith, Executive Vice President of Don Rey, Inc.[2] In that affidavit Mr. Smith states that on September 5, 1972, Mr. Harley Harmon, President of the Nevada State Bank of Las Vegas stated to him that the Nevada State Bank had withdrawn its one million dollar loan commitment to Las Vegas Valley Broadcasting Company and that a letter advising Las Vegas Valley Broadcasting Company of the withdrawal had been sent by the Bank. In a later telephone conversation, Smith continues, Harmon told Smith that he could not find the letter but that Las Vegas Valley Broadcasting Company had been advised of the withdrawal verbally. Smith further states that he had requested Harmon to sign an affidavit concerning Nevada State Bank's withdrawal of its loan commitment to Las Vegas Valley Broadcasting but Harmon declined to sign such an affidavit until he had checked with his counsel; Mr. Harmon then left the city for an extended visit but instructed Smith to check with his counsel on the matter. Smith further asserts that he had made repeated requests of Mr. Harmon's counsel but he has not been provided with such an affidavit nor has Mr. Harmon or his counsel declined to provide one. Finally, Smith notes that a copy of his affidavit is being served on Harmon. Western contends that in view of this state of affairs, issues to determine whether or not the loan relied upon by Valley will be available to it and also issues to determine whether Valley has failed to report a substantial change of decisional significance as required by Section 1.65 of the Commission's Rules or whether it has deliberately misrepresented facts to the Commission must be added to this proceeding.

3. This showing by Western does not warrant the addition of the issues requested. Section 1.229 of the Commission's Rules requires that allegations be supported by affidavits of persons with personal knowledge of the facts. Mr. Smith's affidavit is clearly hearsay. Moreover, Valley's opposition is supported by an affidavit of Mr. James E. Rogers, its president, who states that he is fully familiar with all aspects of the loan commitment from Nevada State Bank, that he personally arranged for the loan commitment, and that he has not been advised that the commitment has been withdrawn and has not had any contact with any officer of the bank concerning this matter. We cannot accept the Bureau's suggestion that even though the Smith affidavit does not comply with the requirements of the Commission's Rules, Western has raised sufficient questions to warrant the inclusion of an issue to determine whether the loan will be available to Valley. Nor are we persuaded by Western's suggestion that Valley's failure to submit a current letter of commitment from the bank justifies a presumption that the bank has withdrawn its commitment.

THE NETWORK AFFILIATION ISSUE

4. Western points out that Valley has reported to the Commission that it will operate as an NBC affiliate. Yet petitioner asserts, Valley has not discussed the possibility of affiliation with NBC or any of its

[2] Don Rey, Inc. is the parent company of Western Communications, Inc.

officers or directors.[3] Moreover, Western contends that NBC would not even consider a request for a network affiliation before the applicant has a construction permit from the Commission. Western argues that, since there are four operating VHF broadcasting stations in Las Vegas, Valley has no real assurance that it will have any network affiliation whatsoever. Petitioner contends that, since Valley's entire programming proposal and a very substantial part of its financing proposal is dependent upon the acquisition of an NBC affiliation, an issue should be specified to determine (a) whether Las Vegas has misrepresented facts to the Commission concerning the existence of an affiliation agreement with NBC Television, or (b) whether it can effectuate its program proposal without a network affiliation and (c) whether it is financially qualified. Both Valley and the Broadcast Bureau oppose the addition of such an issue. They contend that Valley does not purport to have a network affiliation agreement but that the representation in its application is merely a proposal. Furthermore, they contend that in the circumstances of this case, i.e. where Valley seeks the facilities of an existing station which is now an NBC affiliate, Valley can reasonably expect to obtain such an affiliation.

5. It is clear from the documents filed by Valley that it does not now have a firm network affiliation agreement. Moreover, in the circumstances of this case, there is no real assurance that Valley will in fact be able to obtain a network agreement. Since there are four VHF stations in operation in Las Vegas, it is entirely possible that NBC could choose to affiliate with one of the other operating stations. Moreover, it is equally possible that the other networks might well choose to affiliate with the other operating stations, thus leaving Valley to operate as an independent station. Such a change in circumstances may well have a very substantial effect on Valley's ability to meet its financial obligation and its ability to effectuate its proposed programming. In these circumstances, the Board will add an issue to determine whether Valley can reasonably expect to obtain a network affiliation and to ascertain, should such a station not be affiliated with a network, the effect on Valley's financial qualifications and its ability to effectuate its proposed programming. We do not believe, however, that a misrepresentation issue regarding this matter is warranted since Valley did not represent that it already had an affiliation agreement, and the good faith of its proposal to obtain such an agreement has not been challenged.

ISSUE CONCERNING THE CONVICTIONS OF SAM COHEN

6. Western alleges that in 1940, Sam Cohen, a principal of Valley, entered a plea of guilty to a charge of bookmaking, a violation of the California gambling laws, and was sentenced to 50 days in prison or a $1,000.00 fine, and that Cohen in fact paid the fine. Moreover, Western alleges that on September 25, 1964, Cohen entered a plea of *nolo contendre* to an alleged violation of the Internal Revenue Code for filing a false gambling Federal Excise Tax return, and that Cohen

[3] This assertion is supported by an affidavit of Donald J. Mercer, vice president for station relations of NBC.

in fact paid a $1,000.00 fine for this offense. Neither of these criminal convictions were disclosed in Valley's application, petitioner points out. Western contends that Cohen should have reported this information pursuant to the requirements of FCC Form 301, Section II, paragraph 10(d), which asks:

> **Has the applicant or any party to this application been found guilty by any court of (1) any felony, (2) any crime, not a felony, involving moral turpitude, (3) the violation of any State, territorial or local law relating to unlawful lotteries, restraints and monopolies and combinations, contracts or agreements in restraint of trade, or (4) using unfair methods of competition?**

Western contends that the California bookmaking offense falls within the scope of the Commission's request for information concerning violations of the state, territorial or local law relating to unlawful lotteries and that, while the Federal conviction for filing a false gambling tax return does not constitute a felony, it must fall within the definition of a crime involving moral turpitude; thus it should have been reported.

7. In opposition, Valley contends that the information with respect to Cohen was not reported because neither crime was a felony, neither involved moral turpitude, and neither was a violation of unlawful lottery laws. Valley points out that at the time of Cohen's conviction for bookmaking, the State of California had a separate and distinct section of its code dealing with lotteries and that bookmaking does not fall within the definition of a lottery in the State of California. With respect to the filing of a false excise tax return, Valley contends that it was not a crime involving moral turpitude, that the Internal Revenue Service brought the action as a misdemeanor because the false return was the result of a clerical error rather than any deliberate attempt on the part of Cohen to evade the payment of tax, and that the *nolo contendre* plea indicates that all the parties involved agree that the allegations involved were not such that a full trial was necessary. For these reasons, Cohen did not report the violations concerned. The Bureau in its comments suggests that since Western has supported its allegations with appropriate documentation the issue should be added.

8. The requested issue will not be added by the Board. Valley has demonstrated that the 1940 California conviction is not a violation of the state's lottery laws. Moreover, the Board is satisfied by Valley's explanation of the circumstances surrounding Cohen's *nolo contendre* plea in the false gambling excise tax return case that Valley's failure to regard this conviction as a crime involving moral turpitude was not unreasonable and that an evidentiary inquiry into this matter would not be decisive as to Valley's qualifications.

THE GENERAL FINANCIAL QUALIFICATIONS ISSUE

a. The ability of Valley to comply with terms of the Bank letter

9. Western contends that, as a condition precedent to the issuance of its loan, the principals of Valley must have paid in $200,000.00 of unencumbered capital. Further, Western notes that the Valley application does not show what collateral would be available to meet this requirement. Petitioner points out that, as of the date of its petition,

$92,000.00 of the $200,000.00 proposed to be paid by the principals had already been paid in; that of this amount $45,000.00 has already been expended in organizational costs; and that Valley estimates that its legal costs will amount to $175,000,000. Thus, Western contends, the paid in capital cannot be used to meet the $200,000.00 collateral requirement. Moreover, Western contends that the equipment which Valley proposes to purchase for its station cannot serve as collateral because it is to be purchased on credit and will be encumbered to assure the payment of the balance due on the purchase price. In these circumstances, Western argues that even if the loan commitment has not been withdrawn, as it contends, Valley will not be able to produce the necessary $200,000.00 in unencumbered capital. Western also contends that, even if Valley is able to meet the collateral requirements, the loan may not be available because the commitment letter refers to a corresponding bank that would participate in the loan without identifying that bank or advancing any commitment from it to participate in the proposed loan.

10. In opposition, Valley argues that the Commission found it financially qualified and that Western has advanced no evidence that it is not so qualified or that the bank loan will not be available to it. Particularly, Valley argues that Western's concept of unencumbered collateral is not warranted by the terms of the commitment letter which does not specify the nature of the collateral which will be required at the time the loan is taken down. Nor is the absence of a specific commitment on the part of a particular corresponding bank necessary for the validity of the loan commitment, Valley urges. The Bureau notes that the bank loan is an essential part of Valley's proposed financing plan and agrees that Valley may not have the necessary $200,000.00 in unencumbered capital as collateral for the loan.

11. An issue inquiring into the availability of the bank loan will be added. It is not clear precisely what the bank will require by way of collateral nor is it apparent what unencumbered collateral Valley will have available. Since the loan is essential to Valley's financial qualifications, an issue to clarify the matter is appropriate.

b. Ability of Western's stock subscribers to meet their commitments

12. Western also contends that the financial information submitted with respect to eight of Valley's stock subscribers indicates that they are not financially qualified to meet their stock subscriptions. Insofar as Western's allegations are directed to the qualifications of Aaron S. Gold, the matter has become moot since Valley amended its application prior to designation for hearing to delete Mr. Gold as a stock subscriber and the Commission denied Western's motion to strike prejudicial portions of an amendment by Memorandum Opinion and Order, FCC 72–1155, released December 26, 1972, —— FCC 2d ——, —— RR 2d ——. Western contends that the balance sheets of Harry E. Fightlin, Addelair D. Guy, Elizabeth W. Scott, Eugene L. Kirshbaum and James E. Rogers indicate that they do not have sufficient liquid assets in excess of current liabilities to meet their stock subscriptions. Petitioner argues that stocks and bonds listed by these stock subscribers may not be regarded as liquid assets since they have not identified

those securities, the markets upon which they are traded or their current market value. Moreover, Western argues, those stock subscribers who purport to rely upon bank loans to meet their subscription obligation have not submitted sufficient information concerning the terms of the proposed loans to enable a finding that they are qualified to meet their subscriptions.

13. Each of the above-named stock subscribers now purports to rely upon a commitment for a personal loan to meet their respective subscription obligations; and have submitted personal balance sheets which afford the Board an opportunity to determine that the bank commitments are not unreasonable. See *Calajay Enterprises, Inc.*, 32 FCC 2d 690. Stock subscribers, as distinguished from applicants, are not required to show the terms of repayment or other details of the loan agreement. Thus, as to stock subscribers Fightlin, Guy, Scott, Kirshbaum and Rogers, the Board finds no need to inquire further concerning their ability to meet their stock subscriptions.

14. As to stock subscribers James B. and Marie E. McMillan, Western contends that just two weeks after the date of their joint balance sheet showing net assets of almost one half a million dollars, James B. McMillan was discharged in bankruptcy. The inherent inconsistency in the financial position represented by the bankruptcy proceeding as opposed to the current McMillan balance sheet warrants an issue, petitioner urges, to determine whether the McMillans have misrepresented their financial position to the Commission or whether the McMillans are able to meet their stock subscriptions. In opposition, Valley submits an affidavit from James B. McMillan which explains that in 1969, he filed a petition in bankruptcy and that he was subsequently discharged in bankruptcy. McMillan states further that the assets shown on the joint balance sheet of James B. and Marie E. McMillan were largely the personal assets of Marie McMillan before she married James and any additional assets were jointly acquired by James B. and Marie E. McMillan after the petition in bankruptcy had been filed. In these circumstances the Board is satisfied that the McMillans can meet their stock subscriptions. We are not persuaded by Western's argument that, because the assets shown on the joint balance sheets were principally the personal assets of Marie McMillan, James will not be able to meet his subscription obligation, since the assets shown on the balance were not subject to the bankruptcy. Thus, inquiry into the ability of the McMillans to meet their stock subscription is therefore not warranted. Moreover, the uncontradicted explanation proferred by McMillan clearly establishes that the balance sheet did not misrepresent the facts and accordingly no basis for a misrepresentation issue in this regard is present.

15. Western urges that, based on his balance sheet, Clark Henry Tester will not be able to meet his stock subscription. Tester will be program director of Valley's proposed station. He plans to rely upon loans from other stock subscribers to meet his $5,000 obligation. In his affidavit attached to Valley's opposition, Tester states that the repayment for this loan will be made out of current income. In light of these circumstances, an issue concerning Tester's ability to meet his stock subscription is not warranted. It is not unreasonable to assume that the entrepreneurs who are applying for a new te'evision station

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are willing to lend their proposed program director the relatively small sum required to be paid by him for his stock. Nor is it improbable that Tester can meet his obligation to make repayment out of his current income. In light of the foregoing, the Board will add no issues concerning the ability of Valley stock subscribers to meet their obligations to the corporation.

c. Estimated revenue issue

16. Western notes that Valley's financial proposal encompasses only the costs of constructing its proposed station and operating it for three months. Western argues that since Valley cannot be assured of an NBC network affiliation, it cannot rely on proposed revenues to cover the remaining costs of operation during the first year. The Board agrees that, in the absence of an adequate showing that Valley can rely on an NBC network affiliation, its estimated income is too uncertain to be relied on. We do not agree with Valley's contention that the Commission precedent which requires an applicant preparing to replace existing facilities to show sufficient funds to construct and operate its station for three months, is applicable here. It is clear that in making determinations as to whether an applicant has sufficient funds to construct and operate its station, the Commission will take into consideration any factors which are peculiar to the given case, see *Ultravision Broadcasting Company*, 1 FCC 2d 544, 5 RR 2d 343 (1965). In this case Western has pointed out that there is a serious question as to whether Valley will be able to obtain a network affiliation, and, absent such an affiliation, there is no basis for according its estimate of revenues more weight than that ordinarily given to applicants for new facilities. In these circumstances, an appropriate issue will be added to this proceeding.

d. RCA credit issue

17. Western also argues that an examination of Valley's equipment proposal indicates that it will not require $1,470,000.00 worth of equipment from RCA and thus it cannot rely on $1,042,287.00 of deferred credit from RCA. The Board cannot accept this contention. There is no reason to assume that, should Valley require less equipment than that proposed, the deferred credit arrangement will not be available to it. Western's contention that some of the equipment proposed may be purchased elsewhere and thus not included in the RCA credit arrangement is not persuasive. Thus, in our view, Western has raised no question which warrants further inquiry into the proposed credit arrangement.

e. Cost estimate issues

18. Western has also contended that Valley has failed to take into account the cost of constructing and operating a microwave system to deliver its network programming to Las Vegas, Nevada. Western further contends that it maintains an intercity microwave system to deliver its programming to Las Vegas; that the cost of the equipment for this system in 1964 was approximately $83,700.00; that the same equipment today would cost $95,000.00; and that the cost of towers, building and access roads would be an additional $95,000.00. Thus, petitioner asserts, to construct an appropriate intercity microwave

relay system, Valley will be required to invest at least $190,000.00 and to expend at least $48,690.00 per year in operational expenses. In opposition, Valley contends that it has included the cost of microwave service in its first year's operating expense and that it based its projected first year operating costs on the costs for microwave relay service of existing stations in the Las Vegas market as reported in the Commission's annual financial reports for the market. Valley relies upon a statement in the affidavit of Mr. Rogers, its president, to the effect that Valley intended to pay any costs for intercity microwave relay from its anticipated operating expenses. Valley's conclusory statement, with no explanations of the specific costs involved or how those services will be provided is not a satisfactory answer to the allegations advanced by Western. In the Board's view, questions concerning the probable costs to Valley of obtaining the necessary microwave relay service are sufficient to warrant inquiry into this aspect of Valley's proposal.

f. Studio Costs

19. Western alleges that Valley's proposal to lease studio space at a cost of approximately $10,000 per annum will not provide sufficient suitable space in Las Vegas to operate a VHF television station. It is Western's contention that in order to successfully operate a television station certain special equipment is required, such as: abnormally high ceilings, special wiring which would cost a minimum of $25,000.00, special heavy duty air conditioning at a cost of $15,000.00 over the normal building air conditioning equipment and soundproofing which would cost approximately $2,500.00 over normal soundproofing. Furthermore, Western argues that, for such a studio to operate successfully, it must have a minimum of 10,000 square feet of space. In support of this, it points to the space utilized by Stations KORK–TV, KLAS–TV and KSHO–TV, all operating TV stations in Las Vegas, Nevada.[4] Western then alleges that on the current Las Vegas market, $10,000.00 per year can pay for no more than 6,000 square feet of refrigerated warehouse space, that this space would not be sufficient to meet Valley's requirement, nor is the space which could be acquired for this amount suitable for television studio purposes without the inclusion of special wiring, additional air conditioning and special soundproofing. In opposition, Valley submits a letter from its stock subscriber, George C. Brookman, who is also a general contractor in Las Vegas, offering to make available to Valley a building owned by him. According to Brookman the building contains approximately 7,000 square feet of open studio space which will be partitioned in any manner required by Valley at the expense of the owner, in addition, the building contains 4,000 feet of office space. Brookman states that he is offering a ten year lease with an option to renew for an additional ten years, and that the rental for the entire facility, including any partitioning and a transmitter house to be constructed by the owner, would be $10,000 for the first year and the balance of the term at a rental which will allow the owner a fair rate on all of the real property and improvements over the term of the lease. In its reply, Western

[4] Western attaches affidavits of operating officials of each Las Vegas network station setting forth the space required by that station.

submits photographs of the building which Brookman proposes to make available to Valley and contends that it is not properly equipped with refrigerated air conditioning and that the ceilings are probably no more than twelve feet high; thus, Western contends, the building will not be suitable for studio use. The Board, however, is satisfied that Valley can effectuate its proposal, utilizing the space offered by its stockholder Brookman on the terms described in his letter. While the arrangements may be somewhat less than optimum, we are not persuaded that Valley will be unable to operate using those proposed facilities.

g. Transmitter site costs

20. Western contends that Valley has failed to take into account certain cost items necessary to construct its proposed transmitter. Particularly, petitioner alleges that Valley's amended application requires 275 feet of transmission line as opposed to the 150 feet set forth in the original application. Western urges that the additional 125 feet will cost approximately $2,400.00. Moreover, Western notes that Valley has made no provision for a transmitter house at its antenna site and contends that there is not presently any suitable space which Valley could rent at the transmitter site. It is Western's opinion that such a building would cost a minimum of $25,000.00. Western also points out that the only access to Valley's proposed antenna site is via privately owned roads and alleges that the cost of the use of those roads would surely exceed $3,000.00. Thus, Western contends, an issue inquiring into these costs should be included in this proceeding. In opposition, Valley alleges that it will not be necessary for it to construct a transmitter building at its antenna site or to lease space at that site since Mr. Brookman has agreed to construct such a building on the property occupied by its proposed studio and to make it available as part of the package for studio and office space discussed in paragraph 19, *supra*. Moreover, Valley attaches as Exhibit 11 of its opposition a letter from the Bell Telephone Company of Nevada advising Valley that it is not the company's policy to deny others the use of its private access roads so long as certain conditions are met. Further Valley points to Mr. Roger's affidavit to the effect that he stands ready to negotiate with the Alta Corporation [5] for the use of its portion of the access road; in these circumstances, Valley contends, no issue with respect to its cost estimate in this regard is necessary. In our view, Western has raised some questions concerning costs which might be incurred by Valley obtaining access to its proposed antenna site which should be taken into account in this proceeding. Valley has not disclosed what conditions might be imposed as conditions precedent to its use of the telephone company's access road or what the cost might be. Nor does it know what terms might be required to use the Alta Corporation road from the telephone company site to the mountain top. Accordingly, an appropriate issue will be included.

[5] Alta Corporation, owned jointly by Western and KLAS–TV, is the proprietor of a road which runs from the Bell site to the top of Black Mountain, where Valley proposes to erect its antenna.

h. Programming costs

21. Western also questions the validity of Valley's cost estimates in connection with its first year of operation. Essentially, Western bases its argument on its contention that Valley will not have an NBC network affiliation. In view of our prior determination that an issue concerning Valley's network affiliation must be included in this proceeding (see paragraph 5, *supra*), an inquiry into Valley's program costs should such an affiliation not be available is appropriate.

STUDIO AND OFFICE SPACE ISSUE

22. Western contends that the studio and office space proposed by Valley is not adequate for the operation of its television facilities and seeks an issue inquiring into this matter. Particularly, it contends that, based on the current real estate market in Las Vegas, Valley can not possibly procure the facilities that will be necessary to successfully operate its station. In view of our ruling with respect to the cost of Valley's proposed studio and office building (see paragraph 19, *supra*), this issue will not be added to the instant proceeding.

TRANSMITTER ACCESS AND SUITABILITY ISSUE

23. In support of this request, Western contends that Valley must obtain permission from the Department of Interior, Bureau of Land Management to use its proposed Black Mountain site and that in considering such requests the Bureau of Land Management applies the following standard:

> app'icants for communications sites on this mountain will be considered on equal grounds and right of way for use will be allowed if the applicant meets the necessary criteria as established in the Federal regulations.

Western points out that Valley has not given evidence on having requested a permit for the use of Black Mountain and contends that before the Bureau of Land Management will grant such a permit, Valley must show that it has made arrangements to use the access road owned by Bell Telephone Company of Nevada and an access road from the Bell site to the top of the mountain which is owned by Alta Corporation. Furthermore, Western points out that Alta constructed its road at a total cost of approximately $90,000, and urges that, if Valley is to use this road, it will be required to reimburse Western for its share of the cost of construction and to pay its pro rata share of the maintenance of said road. Moreover, Western contends, the mountain top site proposed by Valley is not suitable to support a guyed tower since there is not sufficient level area to provide appropriate sites for the guy anchors. In support of this contention, Western submits an affidavit from its consulting engineer to the effect that the only suitable installation that could be used on Valley's Black Mountain site would be a self-supporting tower. In opposition to these contentions, Valley argues that it already has a letter from Bell Telephone Company of Nevada indicating that Valley will be authorized to use Bell's access road under certain terms and conditions and that it stands ready to negotiate with Alta for the right to utilize its access road to the mountain top. Valley also states, based upon an affidavit of Robert K. Packard, that

should the erection of a guyed tower on its proposed site not prove feasible, it has sufficient leeway in the credit proposal advanced to it by RCA to permit the construction of a self-supporting tower. In these circumstances, by the Board will not add an issue to ascertain the feasibility or suitability of Valley's proposed antenna site.[6]

EQUAL EMPLOYMENT OPPORTUNITY ISSUE

24. Western contends that Valley's one page exhibit which purports to describe its equal employment program fails to set forth any specific practices which will be followed by that company to assure equal employment opportunity for minority group members. In the absence of a detailed program, Western contends that an issue should be added to determine what plans, if any, Valley has made with respect to an equal opportunity employment program. In opposition, Valley argues that the Commission has found it qualified in all respects other than those specified in the issues in the order designating the matter for hearing. However, Valley states, since Western has raised the question, Valley is submitting an affidavit of Mr. James E. Rogers, its president, as Exhibit 13, setting forth its equal employment opportunity program. That affidavit sets forth in considerable detail Valley's program to insure nondiscrimination in recruiting, nondiscriminatory practices with respect to placement and promotion and to insure nondiscrimination in all other areas of its employment practices. In view of these details supplied by Valley, an issue inquiring into Valley's program is not warranted.

PUBLIC INSPECTION FILE ISSUE

25. Western requests an issue to determine whether Valley has complied with Section 1.526 of the Commission's Rules, the local public inspection file rule. Petitioner does not question the fact that Valley maintained a public file in Las Vegas or that the file was made available to Western upon request. However, it contends that certain items which should have been in the file at the time of its inspection were not available. Those items petitioner states, consisted of certain letters and some exhibits and pages associated with amendments referred to in the file. In view of these omissions, Western contends, a Section 1.526 issue should be added to this proceeding. In opposition, Valley states that its public inspection file has always been maintained in the office of its local attorney and upon any request this file has been made available. Further, Valley contends that after a careful examination of its file, it has determined that Item 2 of Western's list, Exhibit 7 to the application with a three page amendment, etc., does not exist; the amendment, in fact, deleted the material referred to. Valley also notes that an item described as Exhibit No. 3 by Western would not require new pages and thus was not missing. Valley submits the other documents referred to by Western as exhibits attached to its opposition. According to the affidavit of Thomas E. Lea, Las Vegas attorney for Valley and custodian of Valley's public inspection file, the file has

[6] See ¶ 20 for our ruling concerning cost of obtaining access to the Black Mountain site.

always been maintained in his office and all of the documents referred to on page 24 of Western's motion to enlarge, were available in his office and would have been given to Western's representative had she requested those documents. However, Valley states, the September 27, 1971 letter to the Commission certifying that the public notice was published, a letter of transmittal to the Commission dated November 21 by Rourke of Welch and Morgan and a one page letter from the Commission to Valley dated November 17, 1971 and a two page letter to the Commission dated September 1, 1972 signed by Rourke, all were apparently mistakenly placed in a litigation file. Nevertheless, Valley contends it has made a bona fide good faith effort to maintain a complete public reference file. In view of these facts, the Board is satisfied that while the file may not have been entirely complete at the time it was provided to Western's representative, Valley has in fact made a good faith effort to maintain a complete file for public reference. Its failure to include the items described above in the file was obviously inadvertent and no useful purpose will be served by adding an issue concerning this matter.

SECTION 1.53(b) ISSUE

26. Western notes that Section 1.53(b) of the Commission's Rules states that:

> applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or, absence from the United States. The attorney shall in that event set forth the reason that the application is not signed by the applicant.

Western also notes that under date of October 26, 1971, Valley submitted an amendment which was signed James E. Rogers, by Gerald S. Rourke, attorney in fact; that there was no explanation that Rogers was either physically disabled, or that he was absent from the United States; on November 2, Valley submitted a new certificate page containing the signature of James E. Rogers dated October 26, 1971. This, Western contends, raises questions as to the validity of Rourke's signature on behalf of Rogers and constitutes a violation of Section 1.53(b) of the Commission's Rules which warrants inquiry at the hearing. In opposition, Valley submits the affidavit of James E. Rogers, who states that he is the president and a director of Valley, that Rourke, Washington, D.C. counsel for Valley, was in Las Vegas from Tuesday, October 19 to Friday, October 22 working with Rogers and other members of Valley to prepare an amendment to Valley's application; that all of the materials for the amendment were completed in draft form and were [re]viewed and approved by Rogers; that Rourke returned to Washington, D.C. on Friday, October 22; that the material was typed in final and ready for filing on October 26, 1972; that Rourke had on that date called Rogers to advise him that he had neglected to sign the certification page before Rourke left Las Vegas; and that Rogers and Rourke discussed possible alternatives and concluded that Rourke should sign the amendment as attorney in fact for Rogers so that it could be filed as a matter of right.[7] Rogers states that since he was fully

[7] Amendments filed before a matter is designated for hearing are accepted as a matter of right. Sec. 1.522 of Commission Rules.

familiar with all of the contents of the amendment, he signed a certification page which was forwarded to Rourke and in turn submitted to the Commission to replace Rourke's signature as attorney in fact. It is apparent that Valley has not literally complied with the requirements of Section 1.53(b); however in view of its explanation set forth in Rogers affidavit, it is apparent that his omission was unintentional and that Rogers fully participated in the preparation of the amendment. Thus the *nunc pro tunc* filing of the certification page with Roger's signature does not require an issue in this proceeding.

THE INEPTNESS AND SECTIONS 1.514 OR 1.65 ISSUE

27. Western contends that, assuming arguendo that Valley's representations as to the availability of the loan from the Bank of Nevada and the availability of its affiliation agreements with NBC and its failure to disclose information concerning Sam Cohen were not intentional and do not disqualify Valley on character grounds, there should nevertheless be an issue specified to determine whether these as well as other alleged errors and omissions cited throughout the petition to enlarge demonstrate that Valley has been so inept and careless that it lacks the qualifications to be a station licensee. Western also argues that several alleged instances of substantial changes in the qualifications of various stockholders which have not been reported warrant the inclusion of an issue to determine whether Valley has complied with Section 1.65 of the Commission's Rules. Furthermore, Western alleges that Valley's failure to give an accurate picture of McMillan's financial condition as compared with that set forth in his bankruptcy proceeding and its failure to set forth the principal occupations of Babero, Guy, Moore and Tester raise questions as to whether Valley has complied with Section 1.514 of the Commission's Rules. In view of all of these circumstances, Western contends that most certainly the issues requested must be added to this proceeding. In view of our rulings on the issues previously discussed in this Memorandum Opinion and Order, neither the ineptness issue, the 1.65 issue or the 1.514 issue appear to be warranted. Since Fightlin and Kirshbaum are relying on bank loans to meet their subscription agreements the changes incurred by their real estate transactions have no significant effect on their ability to meet their subscriptions. Guy is also relying upon a loan and it does not appear that his divorce and property settlement will affect his ability to secure the necessary loan. Nor is it likely that Valley's failure to set forth the principal business or occupation of four of its eighteen stock subscribers is likely to be of decisional significance in this proceeding. Thus, no useful purpose would be served by further inquiry into this matter.

28. Accordingly, IT IS ORDERED, That the motion for leave to file a response, filed February 28, 1973, by Las Vegas Valley Broadcasting Co. IS DENIED; the response to reply, filed February 28, 1973, by Las Vegas Valley Broadcasting Co., IS DISMISSED; and the motion to enlarge issues, filed October 6, 1972 by Western Communications, Inc. IS GRANTED to the extent indicated below, and IS DENIED in all other respects.

29. IT IS FURTHER ORDERED, That the issues in this proceeding ARE ENLARGED by the addition of the following issues:

To determine whether Las Vegas Valley Broadcasting Company can reasonably expect to secure a network affiliation and, if not, the effect on Valley's financial qualifications and its ability to effectuate its program proposal.

To determine the terms and conditions of the proposed bank loan from Nevada State Bank relied upon by Valley, whether Valley can meet those terms and conditions, and whether, in light thereof, the proposed loan will in fact be available to it.

To determine all the facts concerning Valley's proposed microwave relay service and their effect on its financial qualifications.

To determine the cost, terms and conditions which must be met by Valley to obtain access to its proposed transmitter site and their effect on its financial qualifications.

To determine in view of the facts adduced pursuant to the foregoing issues, whether Valley is financially qualified to construct and operate its proposed station.

30. IT IS FURTHER ORDERED, That the burden of proceeding with the introduction of evidence and proof under the issues added herein SHALL BE on Las Vegas Valley Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-101

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of WESTERN COMMUNICATIONS, INC. (KORK-TV), LAS VEGAS, NEV. For Renewal of License	Docket No. 19519 File No. BRCT-327
LAS VEGAS VALLEY BROADCASTING CO., LAS VEGAS, NEV. For Construction Permit for New Television Broadcast Station	Docket No. 19581 File No. BPCT-4465

MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1973; Released March 9, 1973)

BY THE REVIEW BOARD:

1. The Review Board has before it a motion to add an abuse of process issue against Valley Broadcasting Company (Valley), filed November 8, 1972 by Western Communications, Inc. (Western).[1]

2. Understanding of this request will be facilitated by a brief chronology of the events leading up to its filing. Stations KORK-TV, Las Vegas, Nevada, KFSA-TV, Fort Smith, Arkansas, and KOLO-TV, Reno, Nevada, are all owned by Donald Reynolds. Those stations were the subject of an extensive Commission investigation. That investigation resulted in KORK-TV's renewal application being designated for hearing on issues concerning "clipping and double billing". There were allegations of such conduct with respect to KFSA-TV and KOLO-TV. The Commission on the day it designated the KORK-TV renewal application for hearing issued a notice of apparent liability for forfeiture in the amount of $5,000.00 to KFSA-TV. The renewal of KOLO-TV was subsequently granted. Thereafter, Reynolds entered into a contract to sell KFSA-TV to Buford Television, Inc. of Fort Smith, Arkansas. Valley filed a petition to deny the application for assignment of license of KFSA-TV to Buford, alleging that the qualifications of Western to be a licensee of this Commission are at issue in the instant proceeding and that to permit KFSA-TV [2] to be transferred prior to the resolution of Western's qualifications would not be in the public interest. Valley further urged that the proposed assignee is not financially qualified and that the transfer might tend to create a concentration of a media of mass communications in the proposed assignee corporation.

[1] The Board also has before it oppositions, filed by the Broadcast Bureau and Valley, on November 22, 1972, and a reply, filed December 11, 1972, by Western.

[2] Don Rey, Inc. is wholly owned by Don Reynolds. Western is wholly owned by Don Rey and KSFA-TV, Inc. is wholly owned by Western.

3. Western bases its request for the abuse of process issue on Valley's filing of the above described petition to deny. It contends that Valley made no showing that it was a party in interest to the proposed assignment and that the factual allegations are so frivolous that its petition to deny was obviously filed for the purpose of harassing Western. In support of its contention that Valley's petition was filed for the purpose of harassment, Western submits an affidavit of its counsel, Mr. Czarra to the effect that on October 27, Mr. Rourke, counsel for Valley, suggested to Czarra that Western should withdraw from the competition for the television station in Las Vegas and accept an offer from Valley for the appraised value of its station there. Czarra further states that he advised counsel for Valley that Western did not agree to such a proposal and that counsel for Valley then informed him that so long as Western contested its application for Las Vegas, Valley would oppose any application by Mr. Reynolds to dispose of his other broadcast properties. Further, Western alleges that three days later, on October 30, Valley filed its petition to deny the KFSA–TV application for transfer of control. In these circumstances, Western contends the following issue should be specified:

To determine whether Las Vegas Valley Broadcasting Co. (Valley), an applicant for a new television station in Las Vegas, Nevada, acted in good faith in filing a "Petition to Deny" the assignment application of KFSA–TV, Fort Smith, Arkansas (which is licensed to a subsidiary of Western Communications, Inc., licensee of KORK–TV, whose license renewal application in Las Vegas is consolidated for comparative hearing with Valley's application), or whether Valley has sought to delay or otherwise to obstruct the processing of the KFSA–TV assignment application, or Valley has abused the Commission's processes, and whether, in light of the evidence adduced hereunder, Valley is qualified to be a licensee of the Commission.

4. The Board has carefully examined all of the pleadings involved and is satisfied that Valley has not abused the Commission's processes in filing its petition to deny the proposed KFSA–TV transfer of control. Valley is actively challenging the qualifications of Western to be a licensee of this Commission. While the Board will not undertake to evaluate the merits of Valley's petition to deny, it is nevertheless satisfied that Valley has sufficient legitimate interest in that transfer to negate any inference that the petition was filed merely for the purposes of harassment and delay. Moreover, the alleged conversation between Czarra, counsel for Western, and Rourke, counsel for Valley, concerning the possibility of a settlement of the Las Vegas matter does not, in our view, provide an adequate basis for specifying an abuse of process issue. While the details of this informal conversation between counsel are disputed, it is clear from a careful reading of all of the affidavits that no direct threat to use the Commission's processes unless Western discontinued participation in this proceeding was made, and, in the absence of other evidence tending to support the charge, we do not believe that an evidentiary inquiry into this conversation would serve any useful purpose. The requested issue will therefore be denied.

5. Accordingly, IT IS ORDERED, That the motion to add an abuse of process issue, filed by Western Communications, Inc., on November 8, 1972 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary*.

F.C.C. 73R-102

BEFORE THE

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MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1973; Released March 9, 1973)

BY THE REVIEW BOARD:

1. The Review Board has before it a third motion to enlarge issues, filed November 20, 1972, by Western Communications, Inc. (Western)[1] seeking the addition of the following issue against Las Vegas Valley Broadcasting Company (Valley):

> To determine the facts and circumstances surrounding the failure of Valley to submit complete information as to the other broadcast interests of its proposed Vice President, Programming, Clark Henry Tester, in violation of Section 1.514 of the Commission's Rules, and to determine the effect of the evidence adduced under this issue on Valley's qualifications to be a licensee or on the comparative evaluation of Valley.

2. Western bases its motion on the alleged failure of Valley to report certain broadcast connections of Mr. Clark Henry Tester, a principal of Valley and its proposed vice president for programming and program director. Petitioner contends that its motion is timely filed since it did not learn of Mr. Tester's prior connections with broadcast stations until depositions were taken on November 14, 1972. Western notes that question 19 of Section II of FCC Form 301 asks:

> Does applicant or any party to this application have now, or has applicant or any such party had, any interest in, *or connection with*, the following:
> (a) Any standard, FM, or television broadcast station? (Emphasis supplied.)

In response to that question, petitioner notes, Valley stated that Clark Henry Tester is presently the curriculum consultant to Station KLVX, Channel 10, Las Vegas, Nevada, which is licensed to the Clark County School District, but failed to include his employment as an announcer during 1966 and 1967 at KBMI (AM), Henderson, Nevada; announcer, sports director, newsman at KBLU (AM)-TV, Yuma, Arizona during the summer of 1968, and announcer at KVNA

[1] There is also before the Board comments filed by the Broadcast Bureau, December 1, 1972; an opposition, filed by Valley on December 5, 1972, and Western's reply, filed December 15, 1972.

(AM) Flagstaff, Arizona while attending college in 1965, and announcer at KEOS (AM), Flagstaff, Arizona, while attending college in 1965. These missions, Western contends, constitute a violation of Section 1.514 and an issue inquiring into the circumstances surrounding Valley's failure to report is warranted. Western cites *Payne of Virginia*, 28 FCC 2d 66, 21 RR 2d 535 (1971) in support of its request.

3. In opposition, Valley states that Mr. Tester did not consider his part-time employment as a radio announcer during his college years and while he was employed as a school teacher to be significant and thus had not included it on the list of his connections with radio stations. Moreover, Valley contends that all of these associations were terminated more than five years prior to the date the application was filed and that in no circumstances should this be regarded as a major omission.

4. The motion to enlarge issues will be denied. While *Payne of Virginia* clearly establishes that all prior connections with AM, FM and TV stations must be reported in response to question 19, that case also held on facts comparable to those in the matter now before us that the omissions were in fact insignificant and *de minimus*, and that an issue was not warranted. We are satisfied, in view of Valley's explanation, that the logic followed in *Payne of Virginia* is equally applicable in this case.

5. Accordingly, IT IS ORDERED, That the third motion to enlarge issues, filed by Western Communications, Inc., on November 20, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-103

BEFORE THE

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MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1973; Released March 9, 1973)

BY THE REVIEW BOARD:

1. The Review Board has before it a motion to enlarge issues, filed by Western Communications, Inc. (Western), on December 27, 1972.[1] In its motion, Western notes that on December 6, 1972, the Commission granted several applications Western had filed for translator and microwave stations to provide service to a number of remote Nevada communities. The stations applied for are part of a system (referred to as the Donrey System) designed to provide television service from Las Vegas, and Reno to several remote Nevada communities. Western contends that this translator and microwave system will bring a first television service to thousands of citizens of Nevada, and a first Nevada service to others, and that, since this system provides substantial public interest benefits to the people of Nevada, issues should be added to this proceeding to take into account on a comparative coverage basis, the new areas which will be provided service by the signals of KORK-TV delivered via microwave and translator to remote communities. Moreover, Western contends that if it is found disqualified to be a licensee, its translator and microwave service will be terminated and all of those citizens of Nevada which are relying on those signals for their only television service will lose that service. The Commission should therefore take into account this affect on the public interest, petitioner asserts, in making its determination as to Western's qualifications. Finally, Western also seeks an issue to determine whether Valley would provide the microwave and translator service should it be granted authority to operate on Channel 3, Las Vegas. In this event, Western contends, an inquiry would also be warranted to determine whether Valley is financially and otherwise qualified to provide such a service.

[1] The Board also has before it: the Broadcast Bureau's opposition, filed January 9, 1973; Valley's opposition, filed January 17, 1972; and Western's reply, filed February 2, 1973.

2. The grants to Western of five translator authorizations and eight microwave relay stations, which were made after the Western and Valley applications were designated for comparative hearing in this proceeding, were made subject to the following condition:

> This authorization is without prejudice to whatever action the Commission may deem appropriate as a result of the outcome in the proceeding in Docket No. 19519.

If Western's authorizations are terminated pursuant to this condition; it would not be qualified to be a licensee in any event and the public interest benefits of the system would be irrelevant. On the other hand, if Western is found qualified in this proceeding, but did not receive a grant, it would not be forced to terminate the system and the threat of voluntary termination clearly should not be a factor in determining which applicant receives a grant in this proceeding. In these circumstances, the Board will not add the issues requested by Western. Moreover, the proposed system is not in operation nor has it yet been constructed. The Commission's grant of the translator microwave system has been appealed by Washoe Empire, filed January 12, 1973, case No. 73–1044, U.S. Court of Appeals for the District of Columbia Circuit. Thus at this stage the ultimate effect of the grants is highly speculative.

3. Accordingly, IT IS ORDERED, That Western's fourth motion to enlarge issues in this proceeding, filed December 27, 1972, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 73R-104

BEFORE THE

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MEMORANDUM OPINION AND ORDER

(Adopted March 6, 1973; Released March 9, 1973)

BY THE REVIEW BOARD:

1. The Review Board has before it a motion to enlarge the issues in the above captioned proceeding, filed December 27, 1972, by Western Communications, Inc. (Western) seeking the addition of a Section 1.65 issue against Las Vegas Valley Broadcasting Co. (Valley).[1] In support of its request, Western notes that in Valley's opposition to Western's second motion to enlarge issues, Valley stated that it would file a timely amendment to reflect certain changes in the details of its proposed financing, particularly bank letters of commitment to lend two of its stock subscribers the funds which would be required to meet their stock subscriptions. Petitioner also notes that the affidavits from the stock subscribers were dated November 20, or 21, 1972. Thus Valley's application should have been amended by December 19, 1972. Western asserts, as required by Section 1.65 of the Commission's Rules, and, as of the date of filing of Valley's petition, the required amendment had not yet been received by the Commission. The Review Board agrees with the Broadcast Bureau that while Valley should have filed its amendment by December 19, 1972, the purpose of Section 1.65 was effectively achieved by the filing of the affidavits and attached commitment letters which were served on all the parties to this proceeding as of November 20, 1972. Thus Valley's failure to amend, while not to be condoned, is not of sufficient significance to warrant an enlargement of the issues in this already involved and complicated proceeding.

2. Accordingly, IT IS ORDERED, That Western's motion to add a Section 1.65 issue against Las Vegas Valley Broadcasting Co., filed December 27, 1972 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[1] The Board also has before it an opposition, filed by the Broadcast Bureau on January 10, 1973, and an opposition, filed by Valley, on January 17, 1973.